This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

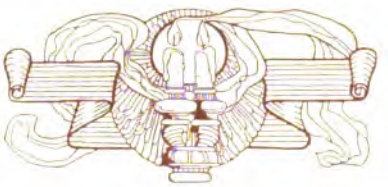
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

B 850,101

Walter S. Penfield



Library of

WALTER SCOTT PENFIELD

WASHINGTON, D. C.

F
786
.C44

United States.

CHAMIZAL ARBITRATION

APPENDIX

TO THE

CASE OF THE UNITED STATES

BEFORE THE

INTERNATIONAL BOUNDARY COMMISSION
UNITED STATES—MEXICO

HON. EUGENE LAFLEUR, PRESIDING

UNDER THE

PROVISIONS OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF MEXICO, CONCLUDED JUNE 24, 1910

VOLUME I

Pages 1–537

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

Gift
W. S. Penfield
1-16-30.

CONTENTS OF THE APPENDIX.

[The Appendix is in two volumes. Volume I contains pages 1 to 537; Volume II contains pages 539 to 1162.]

VOLUME I.

TERMS OF SUBMISSION: Page.

CONVENTION OF 1910, FOR THE ARBITRATION OF THE CHAMIZAL CASE, AND SUPPLEMENTARY PROTOCOL—
English text 3
Spanish text 7

TREATIES AND CONVENTIONS—
Treaty of Limits of 1828—
English text 13
Spanish text 15
Treaty of Limits, etc., of 1848 (Treaty of Guadalupe Hidalgo)—
English text 18
Spanish text 34
Boundary Treaty of 1853 (Gadsden Treaty)—
English text 50
Spanish text 55
Boundary Convention of 1882—
English text 60
Spanish text 64
Boundary Convention of 1884, Rio Grande and Rio Colorado—
English text 67
Spanish text 70
Convention of 1889 establishing International Boundary Commission—
English text 72
Spanish text 76
Convention of 1895 extending for one year duration of International Boundary Commission—
English text 79
Spanish text 81

TERMS OF SUBMISSION—Continued. Page.
TREATIES AND CONVENTIONS—Continued.
Convention of 1900 continuing indefinitely duration of International Boundary Commission—
English text 82
Spanish text 83
Convention of 1905 for the Elimination of Bancos in Rio Grande from effects of Treaty of 1884, and Protocol of Signature—
English text 85
Spanish text 89
RULES AND REGULATIONS—INTERNATIONAL BOUNDARY COMMISSION—
English text 93
Spanish text 95
PROCEEDINGS IN CHAMIZAL CASE NO. 4:
Letter of General Mills to Secretary of State transmitting proceedings, Aug. 4, 1896 101
ENGLISH TEXTS OF—
Joint Journal of International Boundary Commission, Oct. 29, 1895 104
Joint Journal of International Boundary Commission, Nov. 4, 1895 104
Señor Mariscal's letter to Mexican Commissioner submitting papers in Chamizal Case No. 4, Oct. 9, 1894 106
Joint Journal of International Boundary Commission, Nov. 6, 1895 107
Joint Journal of International Boundary Commission, Dec. 11, 1895 109
Joint Journal of International Boundary Commission, Mar. 21, 1896 111
Joint Journal of International Boundary Commission, Mar. 23, 1896 112
Joint Journal of International Boundary Commission, Mar. 25, 1896 114
Report of United States Engineer on Chamizal Map, Mar. 25, 1896 115
Joint Journal of International Boundary Commission, Apr. 7, 1896 116
Joint Journal of International Boundary Commission, Apr. 13, 1896 116
Joint Journal of International Boundary Commission, Apr. 14, 1896 117
Joint Journal of International Boundary Commission, Apr. 16, 1896 120
Joint Journal of International Boundary Commission, Apr. 18, 1896 129

PROCEEDINGS IN CHAMIZAL CASE NO. 4—Continued. Page.

ENGLISH TEXTS OF—Continued.

Joint Journal of International Boundary Commission, Apr. 20, 1896 134

Joint Journal of International Boundary Commission, May 7, 1896 138

Plats and Field Notes of three surveys referred to in Joint Journal of May 7, 1896 143

Joint Journal of International Boundary Commission, May 12, 1896 147

Joint Journal of International Boundary Commission, May 14, 1896 150

Joint Journal of International Boundary Commission, May 16, 1896 151

Joint Journal of International Boundary Commission, May 18, 1896 156

Letter of United States Engineer, May 13, 1896, transmitting report in Chamizal Case No. 4 161

Joint Journal of International Boundary Commission, May 30, 1896 163

Joint Journal of International Boundary Commission, June 24, 1896 164

Report of Mexican Engineer on Chamizal Case No. 4, May 26, 1896 166

Joint Journal of International Boundary Commission, July 10, 1896 183

Joint Journal of International Boundary Commission, July 13, 1896 186

Joint Journal of International Boundary Commission, July 17, 1896 197

SPANISH TEXTS OF—

Joint Journal (acta) of International Boundary Commission, Oct. 29, 1895 214

Joint Journal (acta) of International Boundary Commission, Nov. 4, 1895 214

Señor Mariscal's letter to Mexican Commissioner, submitting papers in Chamizal Case No. 4, Oct. 29, 1894 216

Joint Journal (acta) of International Boundary Commission, Nov. 6, 1895 217

Joint Journal (acta) of International Boundary Commission, Dec. 11, 1895 218

Joint Journal (acta) of International Boundary Commission, Mar. 21, 1896 221

Joint Journal (acta) of International Boundary Commission, Mar. 23, 1896 221

PROCEEDINGS IN CHAMIZAL CASE NO. 4—Continued. Page.
SPANISH TEXTS OF—Continued.
Joint Journal (acta) of International Boundary Commission, Mar. 25, 1896 223
Report of United States Engineer on Chamizal Case No. 4, Mar. 25, 1896 224
Joint Journal (acta) of International Boundary Commission, Apr. 7, 1896 225
Joint Journal (acta) of International Boundary Commission, Apr. 13, 1896 226
Joint Journal (acta) of International Boundary Commission, Apr. 14, 1896 226
Joint Journal (acta) of International Boundary Commission, Apr. 16, 1896 229
Joint Journal (acta) of International Boundary Commission, Apr. 18, 1896 240
Joint Journal (acta) of International Boundary Commission, Apr. 20, 1896 244
Joint Journal (acta) of International Boundary Commission, May 7, 1896 249
Joint Journal (acta) of International Boundary Commission, May 12, 1896 254
Joint Journal (acta) of International Boundary Commission, May 14, 1896 256
Joint Journal (acta) of International Boundary Commission, May 16, 1896 257
Joint Journal (acta) of International Boundary Commission, May 18, 1896 262
Letter of United States Engineer transmitting report on Chamizal Case No. 4, May 13, 1896 267
Joint Journal (acta) of International Boundary Commission, May 30, 1896 269
Joint Journal (acta) of International Boundary Commission, June 24, 1896 270
Report of Mexican Engineer on Chamizal Case No. 4, May 26, 1896 272
Joint Journal (acta) of International Boundary Commission, July 10, 1896 290
Joint Journal (acta) of International Boundary Commission, July 13, 1896 293
Joint Journal (acta) of International Boundary Commission, July 17, 1896 305

PROCEEDINGS IN CHAMIZAL CASE NO. 4—Continued. Page.
DOCUMENTS AND PROCEEDINGS IN RE APPLICATION OF MEXICAN COMMISSIONER FOR REOPENING OF CHAMIZAL CASE—
Gen. Mills to the Secretary of State, Aug. 8, 1896 321
Señor Osorno to Col. Mills, July, 1896 322
Col. Mills to Señor Osorno, Aug. 1, 1896 335
Señor Osorno to Col. Mills, Aug. 2, 1896 336
Journal (incomplete) of International Boundary Commission, Aug. 4, 1896 337
Col. Mills to Señor Osorno, Aug. 4, 1896 340
Joint Journal International Boundary Commission, June 25, 1896 340
Col. Mills to Mr. Olney, Aug. 10, 1896 341
Mr. Rockhill to Col. Mills, Aug. 15, 1896 341
DIPLOMATIC CORRESPONDENCE:
HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4—
Relating to General Question of International Title to Chamizal Tract and negotiations for settlement thereof—
Mr. Sherman to Mr. Clayton, Dec. 22, 1897 345
Gen. Mills to Mr. Sherman, Dec. 4, 1897 346
Joint Journal of International Boundary Commission, Dec. 4, 1897—
English text 347
Spanish text 348
Mr. Clayton to Mr. Sherman, Feb. 15, 1898 349
Mr. Clayton to Señor Mariscal, Dec. 30, 1897 .. 351
Señor Mariscal to Mr. Clayton, Feb. 11, 1898 .. 351
Translation 353
Mr. Sherman to Mr. Clayton, Mar. 2, 1898 354
Mr. Clayton to Mr. Sherman, Mar. 21, 1898 355
Mr. Clayton to Señor Mariscal, Mar. 10, 1898 .. 356
Señor Mariscal to Mr. Clayton, Mar. 16, 1898 .. 357
Translation 361
Mr. Sherman to Mr. Clayton, Apr. 15, 1898 364
Gen. Mills to Mr. Sherman, Apr. 5, 1898 365
Mr. Clayton to Mr. Sherman, Apr. 21, 1898 367
Mr. Clayton to Señor Mariscal, Apr. 21, 1898 .. 367
Señor Creel to Mr. Root, July 19, 1907 368
Translation 370
Señor Godoy to Mr. Root, May 11, 1908 373
Translation 374
Mr. Bacon to Señor Godoy, May 21, 1908 374

DIPLOMATIC CORRESPONDENCE—Continued. Page.
HAVING DIRECT REFERENCE TO CHAMIZAL CASE No. 4—Cont'd.
Relating to General Question of International Title to Chamizal Tract and negotiations for settlement thereof—Continued.
Señor Godoy to Mr. Root, May 21, 1908..... 375
Translation..... 377
Mr. Root to Señor Godoy, May 26, 1908..... 380
Señor Godoy to Mr. Root, Oct. 14, 1908..... 380
Translation..... 382
Mr. Root to Señor Godoy, Oct. 22, 1908..... 383
Señor Godoy, to Mr. Root, Dec. 12, 1908..... 385
Translation..... 389
Mr. Bacon to Señor Godoy, Dec. 22, 1908..... 394
Señor de la Barra to Mr. Knox, Apr. 6, 1909..... 395
Translation..... 396
Mr. Knox to Señor de la Barra, July 28, 1909..... 396
Señor de la Barra to Mr. Knox, Jan. 15, 1910..... 398
Translation..... 405
Mr. Knox to Señor de la Barra, Jan. 29, 1910..... 411
Señor de la Barra to Mr. Knox, Mar. 1, 1910..... 412
Translation..... 413
Mr. Knox to Señor de la Barra, Mar. 7, 1910..... 413
Señor de la Barra to Mr. Knox, Mar. 11, 1910..... 415
Translation..... 416
Señor de la Barra to Mr. Knox, Mar. 19, 1910, with memorandum..... 417
Translation..... 419
Mr. Knox to Señor de la Barra, Mar. 22, 1910..... 421
Mr. Knox to Señor de la Barra, Mar. 22, 1910..... 424
Señor de la Barra to Mr. Knox, Mar. 24, 1910..... 425
Translation..... 426
Señor de la Barra to Mr. Knox, Apr. 5, 1910..... 427
Translation..... 427
Mr. Adee to Señor de la Barra, Apr. 16, 1910..... 428
Señor de la Barra to Mr. Knox, Apr. 16, 1910..... 429
Translation..... 429
Note Verbale of Department of State, May 14, 1910. 430
Memorandum from Mexican Embassy to Department of State, May 18, 1910..... 430
Memorandum from Mexican Embassy to Department of State, June 9, 1910..... 431
Señor de la Barra to Mr. Knox, June 9, 1910.. 431
Translation..... 432
Mr. Knox to Señor de la Barra, June 17, 1910..... 434

DIPLOMATIC CORRESPONDENCE—Continued. Page.
HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4—Cont'd.
Relating to General Question of International Title to Chamizal Tract and negotiations for settlement thereof—Continued.
Mr. Knox to Señor de la Barra, June 27, 1910..... 438
Mr. Knox to Mr. Keblinger, June 27, 1910... 439
Señor Ricoy to Mr. Knox, Oct. 12, 1910..... 440
Translation..... 441
Mr. Adee to Señor de la Barra, Nov. 3, 1910..... 442
Mr. Wilson to Señor de la Barra, Dec. 13, 1910.... 442
Señor de la Barra to Mr. Knox, Dec. 20, 1910..... 443
Translation..... 444
Señor de la Barra to Mr. Knox, Dec. 23, 1910..... 444
Translation..... 445
Mr. Knox to Señor de la Barra, Jan. 6, 1911..... 445
Señor de la Barra to Mr. Knox, Jan. 19, 1911..... 446
Translation..... 446
Mr. Knox to Señor de la Barra, Jan. 24, 1911..... 447
Relating to the Maintenance of the Status Quo—
Relating to original fifty threatened evictions—
Señor Creel to Mr. Root, Mar. 21, 1907..... 449
Translation..... 450
Mr. Bacon to Señor Creel, Mar. 26, 1907..... 450
Señor Creel to Mr. Root, Mar. 25, 1907..... 451
Translation..... 452
Mr. Bacon to Señor Creel, Mar. 26, 1907..... 452
Mr. Bacon to Señor Creel, Apr. 1, 1907..... 453
Mr. Root to Mr. Bonaparte, Mar. 29, 1907 454
Mr. Hoyt to Mr. Root, Mar. 29, 1907..... 455
Mr. Hoyt to Mr. Nolte, Mar. 29, 1907 456
Mr. Hoyt to Mr. Boynton, Mar. 29, 1907 456
Señor Creel to Mr. Root, Apr. 2, 1907..... 457
Translation..... 458
Mr. Root to Señor Creel, Apr. 18, 1907..... 459
Relating to fifty-one threatened evictions—
Señor Creel to Mr. Root, June 17, 1907..... 459
Translation..... 460
Mr. Adee to Señor Creel, June 24, 1907..... 461
Relating to case of Warder *vs.* Cotton before U. S. Supreme Court—
Señor Godoy to Mr. Root, Oct. 28, 1907..... 462
Translation..... 463
Mr. Root to Señor Godoy, Nov. 5, 1907..... 463
Señor Godoy to Mr. Root, Nov. 7, 1907..... 464
Translation..... 465

DIPLOMATIC CORRESPONDENCE—Continued. Page.
HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4—Cont'd.
Relating to the Maintenance of the Status Quo—Cont'd.
Relating to case of Warder *vs.* Cotton before U. S. Supreme Court—Continued.
Señor Creel to Mr. Root, Nov. 13, 1907 465
Translation 465
Mr. Root to Señor Creel, Jan. 20, 1908 467
Gen. Mills to Mr. Root, with inclosure, Jan. 10, 1908 469
Señor Godoy to Mr. Root, Jan. 23, 1908 470
Translation 470
Señor Godoy to Mr. Root, Feb. 24, 1908 471
Translation 472
Mr. Bacon to Señor Godoy, Mar. 11, 1908 473
Relating to Certain Threatened Ejectment Proceedings—
Señor Creel to Mr. Root, Jan. 7, 1908 474
Translation 475
Mr. Bacon to Señor Creel, Jan. 10, 1908 476
Mr. Bacon to Señor Creel, Jan. 16, 1908 476
Señor Godoy to Mr. Root, Apr. 10, 1908 477
Translation 478
Mr. Bacon to Señor Godoy, Apr. 15, 1908 478
Relating to Maintenance of Status Quo in General—
Señor Godoy to Mr. Root, Apr. 30, 1908 479
Translation 480
Mr. Root to Señor Godoy, May 5, 1908 480
Mr. Root to Señor Godoy, May 12, 1908 481
Relating to Certain Proceedings Undertaken by Cotton Estate—
Señor Godoy to Mr. Bacon, Sept. 29, 1908, with inclosure 481
Translation 483
Mr. Root to Señor Godoy, Oct. 1, 1908 489
Mr. Root to Señor Godoy, Oct. 7, 1908 490
Señor Godoy to Mr. Root, Oct. 22, 1908 491
Translation 492
Mr. Adee to Señor Godoy, Nov. 2, 1908 493
Mr. Bacon to Señor Godoy, Nov. 10, 1908 493
Mr. Hoyt to Mr. Root, Nov. 3, 1908 494
Mr. Root to Señor Godoy, Nov. 17, 1908 494
Mr. Fowler to Mr. Root, Nov. 10, 1908 ... 495
Señor Godoy to Mr. Root, Dec. 18, 1908 496
Translation 496

DIPLOMATIC CORRESPONDENCE—Continued. Page.
HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4—Cont'd.
Relating to the Maintenance of the Status Quo—Cont'd.
Correspondence Relating to the Eviction of Mrs. Valenzuela—
Señor de la Barra to Mr. Knox, Apr. 15, 1909 . 497
Translation 498
Mr. Wilson to Señor de la Barra, Apr. 16, 1909 . 500
Mr. Wickersham to Mr. Knox, Apr. 15, 1910 501
Mr. Wickersham to Mr. Boynton, Apr. 15, 1910 501
Mr. Wilson to Señor Alvares, Apr. 29, 1909 502
Señor Alvares to Mr. Wilson, May 1, 1909 502
Mr. Wilson to Señor Alvares, May 6, 1909 503
Mr. Ellis to Mr. Knox, Apr. 30, 1909 504
Mr. Boynton to Mr. Wickersham, Apr. 27, 1909 505
Señor de la Barra to Mr. Knox, July 30, 1909 . . 506
Translation 506
Mr. Adee to Señor de la Barra, Aug. 10, 1909 . . . 507
Correspondence relating to the proposed location of the El Paso Garbage and Sewer Disposal Plant on the Chamizal Tract—
Señor de la Barra to Mr. Knox, July 15, 1909 . . 507
Translation 508
Mr. Adee to Señor de la Barra, July 22, 1909 . . . 509
Mr. Wilson to Señor de la Barra, July 30, 1909 . 510
Señor Dávalos to Mr. Knox, Jan. 6, 1910 510
Translation 511
Mr. Wilson to Señor Dávalos, Jan. 11, 1910 512
Señor de la Barra to Mr. Knox, Mar. 11, 1910 . . 513
Translation 513
Mr. Knox to Señor de la Barra, Mar. 22, 1910 . . 514
Memorandum of Mexican Embassy to Department of State, Aug. 1, 1910 514
Señor de la Barra to Mr. Knox, Aug. 2, 1910 . . . 515
Translation 515
Memorandum of Department of State to Mexican Embassy, Aug. 10, 1910 516
Mr. Wilson to Señor de la Barra, Aug. 24, 1910 . 516
Mr. Wilson to Señor Ricoy, Aug. 30, 1910 517
Mr. Hewitt to Mr. Knox, Aug. 20, 1910 . . . 518
Mr. Adee to Señor Ricoy, Oct. 3, 1910 520
Señor Ricoy to Mr. Knox, Oct. 6, 1910 521
Translation 521

DIPLOMATIC CORRESPONDENCE—Continued. Page.

HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4—Cont'd.

Relating to the Maintenance of the Status Quo—Cont'd.

Correspondence relating to the proposed location of the El Paso Garbage and Sewer Disposal Plant on the Chamizal Tract—Continued.

Señor Ricoy to Mr. Knox, Oct. 8, 1910 522
Translation 523
Mr. Adee to Señor Ricoy, Oct. 15, 1910 523
Señor de la Barra to Mr. Knox, Oct. 20, 1910.. 524
Translation 525

Relating to Ejectment of Hipolite Mena—

Señor Dávalos to Mr. Knox, Dec. 1, 1909 526
Translation 527
Mr. Wilson to Señor Dávalos, Dec. 3, 1909 527
Señor Dávalos to Mr. Knox, Dec. 7, 1909 528
Translation 529
Mr. Wilson to Señor Dávalos, Dec. 9, 1909 529
Mr. Wilson to Señor Dávalos, Dec. 14, 1909 ... 530
Señor de la Barra to Mr. Knox, Mar. 21, 1910 . 531
Translation 531
Mr. Wilson to Señor de la Barra, Mar. 31, 1910. 532

Correspondence relating to certain proceedings before Judge Walthall—

Señor de la Barra to Mr. Knox, Feb. 5, 1910.. 533
Translation 533
Mr. Wilson to Señor de la Barra, Feb. 10, 1910. 534
Mr. Wilson to Señor de la Barra, Feb. 11, 1910. 535
Mr. Wickersham to Mr. Knox, Feb. 8, 1910 535
Mr. Wilson to Señor de la Barra, Mar. 17, 1910. 537

VOLUME II.

DIPLOMATIC CORRESPONDENCE:

OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—

Period from 1849–1875—

Mr. Clifford to Señor Cuevas, Feb. 10, 1849 539
Señor Cuevas to Mr. Clifford, Feb. 10, 1849 541
Translation 542
Mr. Marcy to Mr. Gadsden, July 15, 1853 543
Mr. Gadsden to Mr. Marcy, Mar. 20, 1854 548
Notes of diplomatic conference of Dec. 22, 1853. 548
Notes of diplomatic conference of Dec. 23, 1853. 549
Señor Romero to Mr. Seward, with inclosures, Jan. 9, 1867 552
Translation 555

DIPLOMATIC CORRESPONDENCE—Continued. Page.

OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.

Period from 1849–1875—Continued.

Mr. Seward to Señor Romero, Feb. 5, 1867 558
Opinion of Attorney-General Cushing, Nov. 11, 1856 559
Señor Romero to Mr. Seward, Feb. 6, 1867 564
Translation 565
Mr. Seward to Señor Romero, Feb. 25, 1867 567
Señor Palacio to Mr. Fish, Aug. 11, 1871 567
Translation 569
Mr. Davis to Señor Palacio, Aug. 14, 1871 571
Señor Palacio to Mr. Davis, Aug. 15, 1871 572
Translation 573
Mr. Fish to Señor Palacio, Mar. 7, 1872 574
Mr. Wilson to Mr. Hunter, Dec. 21, 1871 574
Señor Palacio to Mr. Fish, Mar. 11, 1872 577
Translation 577

Period from 1876–1886—

Mr. Fish to Señor Mariscal, July 20, 1876 578
Señor Mariscal to Mr. Fish, July 22, 1876 578
Translation 579
Señor Romero to Mr. Frelinghuysen, Mar. 13, 1884, with inclosure 580
Translation 581
Mr. Frelinghuysen to Señor Romero, Apr. 8, 1884 .. 582
Mr. Frelinghuysen to Mr. Morgan, Apr. 23, 1884 .. 583
Mr. French to Mr. Frelinghuysen, Apr. 8, 1884 584
Mr. Haynes to Mr. French, Mar. 26, 1884 . 584
Mr. Monroe to Mr. Haynes, Mar. 20, 1884 . 586
Señor Romero to Mr. Frelinghuysen, May 24, 1884 . 586
Translation 587
Señor Romero to Mr. Frelinghuysen, with draft of treaty, May 31, 1884 587
Translation 589
Señor Romero to Mr. Frelinghuysen, June 2, 1884 .. 592
Translation 593
Señor Romero to Mr. Frelinghuysen, June 5, 1884 .. 594
Translation 594
Mr. Frelinghuysen to Señor Romero, June 10, 1884 . 595
Señor Romero to Mr. Frelinghuysen, June 12, 1884, with inclosures 595
Translation 618

DIPLOMATIC CORRESPONDENCE—Continued. Page.
Mexico Diplomatic Correspondence Concerning the Boundary Treaties Between the United States and Mexico, 1849–1896—Continued.
Period from 1849–1886—Continued.
Mr. Frelinghuysen to Mr. Morgan, June 17, 1884 ... 642
Mr. Haynes to Mr. Frelinghuysen, June 2, 1884 643
Señor Vizcaya to Mr. Lowe, May 31, 1884 646
Señor Romero to Mr. Frelinghuysen, July 7, 1884 .. 646
Translation 647
Mr. Frelinghuysen to Señor Romero, July 10, 1884. 648
Señor Romero to Mr. Frelinghuysen, July 10, 1884. 649
Translation 650
Mr. Frelinghuysen to Señor Romero, July 10, 1884. 652
Mr. Frelinghuysen to Mr. Morgan, July 11, 1884 655
Mr. Frelinghuysen to Señor Romero, July 22, 1884. 658
Mr. Folger to customs Collector at Brownsville, Tex., July 5, 1884 659
Mr. Morgan to Mr. Frelinghuysen, Aug. 12, 1884 ... 660
Memoranda of an interview between Mr. Morgan and Señor Fernandez, July 31, 1884 663
Señor Romero to Mr. Davis, Aug. 22, 1884 665
Translation 666
Mr. Davis to Mr. Morgan, Aug. 29, 1884 666
Señor Romero to Mr. Frelinghuysen, Oct. 9, 1884 ... 667
Translation 668
Señor Romero to Mr. Frelinghuysen, Oct. 10, 1884.. 670
Translation 671
Mr. Frelinghuysen to Señor Romero, Oct. 16, 1884.. 672
Mr. Frelinghuysen to Señor Romero, Oct. 16, 1884.. 672
Mr. Frelinghuysen to Mr. Morgan, Oct. 16, 1884.... 673
Mr. Frelinghuysen to Mr. Morgan, Oct. 16, 1884.... 673
Mr. Frelinghuysen to Mr. Morgan, Nov. 4, 1884.... 674
Mr. Frelinghuysen to Mr. Morgan, Nov. 8, 1884.... 675
Señor Romero to Mr. Frelinghuysen, Nov. 21, 1884.. 675
Translation 676
Mr. Frelinghuysen to Señor Romero, Dec. 4, 1884... 677
Señor Romero to Mr. Frelinghuysen, Dec. 5, 1884... 677
Translation 679
Mr. Bayard to Señor Romero, Mar. 21, 1885..... 680
Señor Romero to Mr. Bayard, Mar. 21, 1885..... 681
Translation 681
Señor Romero to Mr. Bayard, Dec. 26, 1885..... 682
Copy of the decree of the Mexican Senate of Dec. 11, 1885 683
Translation 684

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1876–1886—Continued.
Mr. Porter to Señor Romero, Feb. 3, 1886 685
Mr. Bayard to Señor Romero, July 1, 1886 686
Copy of Senate Resolution, June 23, 1886 686
Señor Romero to Mr. Bayard, July 1, 1886 687
Translation 688
Señor Romero to Mr. Bayard, Sept. 4, 1886 689
Translation 689
Period from 1887–1907—
Señor Romero to Mr. Bayard, Dec. 6, 1887 690
Translation 691
Mr. Bayard to Señor Romero, Jan. 3, 1888 692
Mr. Bayard to Mr. Connery, Jan. 16, 1888 693
Mr. Crain to Mr. Bayard, Jan. 9, 1888 693
Mr. Cooke to Mr. Crain, Dec. 31, 1887 694
Mr. Bayard to Mr. Crain, Jan. 12, 1888 696
Mr. Bayard to Mr. Connery, Jan. 26, 1888 698
Mr. Fairchild to Mr. Bayard, Jan. 24, 1888 698
Mr. Connery to Mr. Bayard, Feb. 6, 1888 699
Mr. Bayard to Señor Romero, Feb. 10, 1888 700
Mr. Ross to Mr. Bayard, Feb. 3, 1888 700
Mr. Dean to Mr. Ross, Jan. 30, 1888 701
Señor Romero to Mr. Bayard, Feb. 11, 1888 702
Translation 703
Mr. Bayard to Mr. Connery, Feb. 13, 1888 704
Mr. Lanham to Mr. Bayard, Feb. 8, 1888 705
Mr. Russell to Mr. Lanham, Jan. 30, 1888 .. 705
Mr. Bayard to Mr. Connery, Feb. 15, 1888 706
Mr. Bayard to Mr. Crain, Feb. 13, 1888 706
Mr. Bragg to Mr. Bayard, May 30, 1888 707
Mr. Connery to Señor Mariscal, Feb. 24, 1888 .. 708
Señor Mariscal to Mr. Bragg, May 22, 1888 708
Translation 709
Señor Romero to Mr. Bayard, Aug. 13, 1888, with inclosure 710
Translation 714
Mr. Bayard to Señor Romero, Oct. 2, 1888 718
Señor Romero to Mr. Bayard, Nov. 12, 1888 719
Report of Y. Garfias, Nov. 4, 1888 719
Translation 721
Mr. Bayard to Señor Romero, Nov. 14, 1888 723
Mr. Bayard to Mr. Whitehouse, Nov. 14, 1888 723

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Memorandum of conversation between Señor Romero and Mr. Adee, Nov. 15, 1888 724
Mr. Rives to Mr. Whitehouse, Nov. 15, 1888 725
Mr. Bayard to Mr. Endicott, Nov. 14, 1888 727
Mr. Bayard to Señor Romero, Nov. 15, 1888 728
Mr. Whitehouse to Mr. Bayard, Nov. 15, 1888 729
Memorandum left with Señor Mariscal by Mr. Whitehouse, Nov. 14, 1888 730
Mr. Whitehouse to Mr. Bayard, Nov. 16, 1888 731
Señor Mariscal to Mr. Whitehouse, Nov. 15, 1888, with inclosure 731
Translation 733
Mr. Bayard to Mr. Whitehouse, Nov. 17, 1888 734
Mr. Whitehouse to Mr. Bayard, Nov. 19, 1888 734
Mr. Whitehouse to Señor Mariscal, Nov. 19, 1888 735
Mr. Whitehouse to Mr. Bayard, Nov. 20, 1888 735
Señor Mariscal to Mr. Whitehouse, Nov. 19, 1888 736
Translation 736
Mr. Whitehouse to Señor Mariscal, Nov. 20, 1888 737
Mr. Bayard to Mr. Whitehouse, Nov. 27, 1888 738
Mr. Bayard to Maj. Ernst, Nov. 19, 1888 739
Señor Romero to Mr. Bayard, Dec. 4, 1888, with draft of convention 740
Translation 744
Señor Romero to Mr. Bayard, Dec. 6, 1888 748
Translation 749
Mr. Bayard to Señor Romero, Dec. 7, 1888 749
Señor Romero to Mr. Bayard, Jan. 25, 1889, with inclosure 750
Translation 751
Mr. Bayard to Señor Romero, Feb. 27, 1889 752
Señor Romero to Mr. Bayard, Feb. 27, 1889 754
Translation 755
Mr. Bayard to Mr. Bragg, Feb. 28, 1889 756
Mr. Bayard to Señor Romero, Mar. 1, 1889 757
Mr. Bayard to Señor Romero, Mar. 1, 1889 757
Maj. Ernst to Mr. Bayard, Dec. 12, 1888 758
Report of Engr. Garfias, Mar. 25, 1886 ... 769

LOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Señor Romero to Mr. Bayard, Mar. 1, 1889 781
Translation 782
Mr. Adee to Señor Romero, Mar. 7, 1889 783
Señor Romero to Mr. Adee, Mar. 7, 1889 783
Translation 784
Señor Romero to Mr. Blaine, May 22, 1889 784
Translation 785
Mr. Blaine to Señor Romero, May 25, 1889 785
Mr. Blaine to Señor Romero, June 26, 1889 786
Señor Romero to Mr. Blaine, June 28, 1889 786
Translation 786
Señor Romero to Mr. Blaine, Jan. 28, 1890 787
Report of Engr. Garfias, July 2, 1889 788
Translation 796
Señor Romero to Mr. Blaine, Jan. 30, 1890, with inclosure 806
Translation 808
Mr. Blaine to Señor Romero, Mar. 3, 1890 810
Señor Romero to Mr. Blaine, Mar. 3, 1890 810
Translation 811
Mr. Blaine to Señor Romero, Mar. 21, 1890 811
Gov. Ross to the Secretary of State, Mar. 13, 1890 813
Gen. King to Gov. Ross, Mar. 13, 1890 814
Capt. Brooks to Gen. King, Mar. 6, 1890 .. 814
Sheriff Brito to Gen. King, Mar. 4, 1890 ... 817
County Surveyor Hord to Capt. Brooks, Mar. 4, 1890 818
Señor Romero to Mr. Blaine, Mar. 22, 1890 819
Translation 821
Mr. Blaine to Señor Romero, Apr. 9, 1890 822
Señor Romero to Mr. Blaine, Apr. 24, 1890 823
Translation 824
Mr. Blaine to Señor Romero, May 24, 1890 824
Mr. Blaine to Mr. Ryan, May 24, 1890 825
Señor Romero to Mr. Blaine, May 26, 1890 825
Translation 826
Mr. Blaine to Señor Romero, May 26, 1890 826
Señor Romero to Mr. Blaine, Nov. 27, 1890 827
Translation 828

DIPLOMATIC CORRESPONDENCE—Continued. Page.

OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.

Period from 1887–1907—Continued.

Mr. Blaine to Señor Romero, Dec. 5, 1890..... 829
Señor Romero to Mr. Blaine, Dec. 19, 1890..... 829
Translation..... 830
Mr. Blaine to Señor Romero, Dec. 23, 1890..... 831
Señor Romero to Mr. Blaine, Dec. 23, 1890..... 831
Translation..... 832
Señor Romero to Mr. Blaine, Feb. 23, 1891..... 832
Translation..... 833
Mr. Blaine to Señor Romero, Feb. 28, 1891..... 833
Señor Romero to Mr. Wharton, May 30, 1891..... 834
Translation..... 834
Mr. Wharton to Señor Romero, June 17, 1891..... 835
Señor Romero to Mr. Blaine, Nov. 3, 1891..... 835
Translation..... 836
Mr. Blaine to Señor Romero, Nov. 6, 1891..... 836
Mr. Gresham to Mr. Gray, June 15, 1893..... 837
Memorial of Mr. Lopez, Mar. 31, 1893 837
Mr. Lopez to Mr. Gresham, June 1, 1893..... 839
Mr. Gray to Mr. Gresham, July 8, 1893..... 840
Mr. Gray to Señor Mariscal, July 5, 1893..... 840
Mr. Gray to Mr. Gresham, Sept. 9, 1893..... 843
Mr. Gresham to Mr. Gray, Sept. 6, 1893..... 844
Mr. Gray to Señor Mariscal, Sept. 7, 1893..... 844
Señor Mariscal to Mr. Gray, Sept. 8, 1893..... 845
Translation..... 845
Mr. Gray to Señor Mariscal, Sept. 8, 1893..... 845
Señor Mariscal to Mr. Gray, Sept. 8, 1893..... 846
Translation..... 847
Mr. Gray to Señor Mariscal, Sept. 9, 1893..... 849
Mr. Gray to Mr. Gresham, Sept. 16, 1893..... 849
Mr. Gresham to Mr. Gray, Sept. 10, 1893..... 850
Mr. Gray to Señor Mariscal, Sept. 11, 1893..... 851
Señor Mariscal to Mr. Gray, Sept. 11, 1893..... 852
Translation..... 852
Mr. Gresham to Mr. Gray, Sept. 14, 1893..... 853
Mr. Gray to Mr. Gresham, Sept. 14, 1893..... 853
Señor Limantour to Mr. Gray, Sept. 15, 1893.. 853
Translation..... 853

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Mr. Gray to Mr. Gresham—Continued.
Señor Fernandez to Señor Limantour, Sept. 14, 1893 854
Translation 854
Señor Romero to Mr. Gresham, Oct. 12, 1893 854
Translation 855
Mr. Gray to Mr. Gresham, Oct. 14, 1893 855
Señor Azpiroz to Mr. Gray, July 24, 1893 856
Translation 856
Mr. Gray to Señor Mariscal, Sept. 25, 1893 857
Señor Mariscal to Mr. Gray, Sept. 28, 1893 857
Translation 860
Mr. Gresham to Señor Romero, Oct. 16, 1893 862
Mr. Gresham to Mr. Gray, Oct. 25, 1893 862
Señor Romero to Mr. Gresham, Nov. 7, 1893 863
Translation 863
Mr. Gresham to Señor Romero, Nov. 9, 1893 863
Señor Romero to Mr. Gresham, Nov. 13, 1893 864
Translation 864
Mr. Gresham to Señor Romero, Nov. 15, 1893 865
Mr. Gresham to Señor Romero, Dec. 21, 1893 865
Señor Romero to Mr. Gresham, Dec. 23, 1893 865
Translation 866
Mr. Gresham to Señor Romero, Jan. 24, 1894 866
Señor Romero to Mr. Gresham, Jan. 25, 1894 867
Translation 868
Señor Romero to Mr. Gresham, Jan. 25, 1894, with inclosure 869
Translation 876
Mr. Gresham to Señor Romero, Jan. 31, 1894 883
Señor Romero to Mr. Gresham, Feb. 1, 1894 884
Translation 884
Señor Romero to Mr. Gresham, Feb. 9, 1894 885
Translation 886
Señor Romero to Mr. Gresham, Feb. 9, 1894 886
Translation 887
Mr. Gresham to Señor Romero, Feb. 21, 1894 887
Mr. Gresham to Señor Romero, Feb. 21, 1894 888
Señor Romero to Mr. Gresham, Feb. 26, 1894 888
Translation 889

DIPLOMATIC CORRESPONDENCE—Continued. Page.

OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.

Period from 1887–1907—Continued.

Señor Romero to Mr. Gresham, Mar. 12, 1894 889
Translation 890
Mr. Uhl to Señor Romero, Mar. 13, 1894 891
Mr. Uhl to Señor Romero, Mar. 21, 1894 891
Señor Romero to Mr. Gresham, Mar. 28, 1894 892
Translation 893
Mr. Uhl to Señor Romero, Mar. 30, 1894 895
Señor Romero to Mr. Gresham, May 26, 1894 895
Translation 896
Mr. Gresham to Señor Romero, May 28, 1894 897
Señor Romero to Mr. Gresham, June 30, 1894 897
Translation 898
Señor Romero to Mr. Gresham, July 2, 1894 898
Translation 899
Mr. Gresham to Señor Romero, July 5, 1894 899
Señor Romero to Mr. Gresham, July 9, 1894 900
Señor Mariscal to Señor Osorno, June 29, 1894. 900
Translation 902
Mr. Gresham to Señor Romero, July 14, 1894 904
Mr. Uhl to Señor Romero, May 3, 1895 904
Mr. Adee to Señor Romero, July 23, 1895 906
Señor Romero to Mr. Olney, July 25, 1895 907
Translation 907
Señor Romero to Mr. Olney, Aug. 12, 1895 908
Translation 908
Mr. Adee to Señor Romero, Sept. 6, 1895 909
Señor Romero to Mr. Olney, Sept. 10, 1895 910
Translation 910
Mr. Olney to Señor Romero, Sept. 16, 1895 911
Señor Romero to Mr. Olney, Sept. 18, 1895 911
Translation 912
Mr. Olney to Señor Romero, Sept. 30, 1895 912
Mr. Olney to Señor Romero, Dec. 5, 1895 912
Señor Romero to Mr. Olney, Dec. 5, 1895 913
Translation 913
Señor Romero to Mr. Olney, Dec. 12, 1895 914
Translation 914
Mr. Olney to Señor Romero, Dec. 20, 1895 915
Señor Romero to Mr. Olney, Dec. 20, 1895 915
Translation 916

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Mr. Olney to Señor Romero, Feb. 29, 1896, with draft of convention 916
Señor Romero to Mr. Olney, Feb. 29, 1896 920
Translation 921
Mr. Olney to Señor Romero, Apr. 15, 1896 921
Señor Romero to Mr. Olney, May 11, 1896, with inclosure 923
Translation 925
Mr. Olney to Señor Romero, May 19, 1896 927
Mr. Olney to Señor Covarrubias, June 16, 1896 928
Señor Romero to Mr. Olney, Sept. 17, 1896 928
Translation 928
Señor Romero to Mr. Olney, Oct. 10, 1896 929
Translation 930
Mr. Olney to Señor Romero, Oct. 10, 1896 930
Señor Romero to Mr. Olney, Oct. 16, 1896 931
Translation 931
Señor Romero to Mr. Olney, Mar. 3, 1897 932
Translation 932
Señor Romero to Mr. Sherman, July 22, 1897, with inclosures 933
Translation 939
Mr. Sherman to Señor Romero, Sept. 10, 1897 945
Mr. Sherman to Mr. Clayton, Sept. 13, 1897 946
Mr. Clayton to Mr. Sherman, Sept. 22, 1897 947
Mr. Clayton to Señor Mariscal, Sept. 22, 1897. 947
Mr. Clayton to Mr. Sherman, Oct. 1, 1897 948
Señor Mariscal to Mr. Clayton, Sept. 29, 1897 . 949
Translation 949
Mr. Sherman to Mr. Clayton, Oct. 26, 1897 950
Gen. Mills to Mr. Sherman, Oct. 1, 1897 953
Mr. Osorno to Gen. Mills, Sept. 4, 1897 ... 954
Mr. Osorno to Gen. Mills, Sept. 30, 1897 ... 955
Gen. Mills to Mr. Osorno, Sept. 14, 1897 .. 956
Gen. Mills to Mr. Sherman, Oct. 15, 1897 956
Mr. Clayton to Mr. Sherman, Nov. 3, 1897 958
Mr. Clayton to Señor Mariscal, Nov. 3, 1897 .. 959
Mr. Clayton to Mr. Sherman, Nov. 12, 1897 961
Señor Mariscal to Mr. Clayton, Nov. 10, 1897 .. 962
Translation 962
Mr. Clayton to Mr. Sherman, Nov. 12, 1897 ... 963

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Señor Romero to Mr. Sherman, Dec. 25, 1897 963
Translation 964
Mr. Sherman to Señor Romero, Dec. 29, 1897 965
Señor Romero to Mr. Sherman, Jan. 6, 1898 965
Translation 967
Mr. Sherman to Señor Romero, Jan. 10, 1898 968
Señor Romero to Mr. Day, June 7, 1898, with inclosures 968
Translation 972
Señor Romero to Mr. Day, June 14, 1898 976
Translation 977
Mr. Day to Señor Romero, June 18, 1898 977
Mr. Moore to Señor Romero, June 28, 1898 978
Señor Romero to Mr. Day, June 29, 1898, with inclosure 978
Translation 979
Señor Romero to Mr. Day, July 23, 1898, with inclosure 981
Translation 984
Mr. Hay to Mr. Clayton, Oct. 11, 1898 988
Gen. Mills to Mr. Adee, Oct. 6, 1898 988
Mr. Clayton to Mr. Hay, Oct. 18, 1898 990
Mr. Hay to Mr. Clayton, Oct. 31, 1898 991
Mr. Clayton to Mr. Hay, Nov. 9, 1898 991
Señor Mariscal to Mr. Clayton, Nov. 4, 1898 .. 992
Translation 992
Mr. Hay to Mr. Clayton, Nov. 16, 1898 993
Gen. Mills to Mr. Hay, Nov. 9, 1898 994
Señor Blanco to Gen. Mills, Nov. 4, 1898 . 996
Translation 996
Gen. Mills to Señor Blanco, Nov. 9, 1898. 999
Draft of Convention 1004
Mr. Hay to Mr. Clayton, Nov. 19, 1898 1006
Mr. Hay to Mr. Clayton, Dec. 1, 1898 1006
Mr. Hay to Mr. Clayton, Apr. 10, 1899 1007
Gen. Mills to Mr. Hay, Feb. 6, 1899 1007
Gen. Mills to Mr. Hay, Apr. 4, 1899 1009
Mr. McCreery to Mr. Hay, Apr. 21, 1899 1010
Mr. McCreery to Señor Mariscal, Apr. 21, 1899 1011

DIPLOMATIC CORRESPONDENCE—Continued. Page.

OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.

Period from 1887–1907—Continued.

Mr. Hay to Mr. McCreery, Apr. 22, 1899..... 1011
Gen. Mills to Mr. Hay, Apr. 22, 1899..... 1012
Mr. McCreery to Mr. Hay, Apr. 28, 1899..... 1013
Mr. McCreery to Señor Mariscal, Apr. 28, 1899. 1014
Mr. McCreery to Mr. Hay, May 4, 1899..... 1014
Señor Mariscal to Mr. McCreery, May 1, 1899.. 1015
Translation..... 1017
Mr. McCreery to Señor Mariscal, May 4, 1899. 1018
Mr. Hill to Señor Aspíroz, Oct. 9, 1899..... 1019
Mr. Hay to Mr. Clayton, Nov. 15, 1899..... 1021
Draft of Convention..... 1023
Gen. Mills to Mr. Hay, June 5, 1899..... 1027
Mr. Clayton to Mr. Hay, Nov. 22, 1899..... 1030
Mr. Clayton to Mr. Hay, Nov. 23, 1899..... 1031
Mr. Clayton to Señor Mariscal, Nov. 23, 1899.. 1031
Mr. Clayton to Mr. Hay, Dec. 8, 1899..... 1032
Mr. Clayton to Mr. Hay, Dec. 26, 1899..... 1033
Señor Mariscal to Mr. Clayton, Dec. 22, 1899.. 1033
Translation..... 1034
Mr. Hay to Mr. Clayton, Dec. 26, 1899..... 1034
Mr. Clayton to Mr. Hay, Jan. 3, 1900..... 1034
Señor Aspíroz to Mr. Hay, Oct. 8, 1900..... 1035
Translation..... 1036
Mr. Hay to Señor Aspíroz, Oct. 31, 1900..... 1036
Señor Aspíroz to Mr. Hay, Nov. 15, 1900, with draft of convention..... 1037
Translation..... 1039
Mr. Hay to Señor Aspíroz, Nov. 20, 1900..... 1040
Mr. Hay to Señor Aspíroz, Dec. 21, 1900..... 1040
Señor Aspíroz to Mr. Hay, Dec. 22, 1900..... 1041
Translation..... 1041
Mr. Hay to Mr. Clayton, Dec. 1, 1904..... 1042
Mr. Clayton to Mr. Hay, Dec. 13, 1904..... 1043
Mr. Clayton to Señor Mariscal, Dec. 13, 1904.. 1044
Señor Aspíroz to Mr. Hay, Feb. 8, 1905..... 1045
Señor Mariscal to Señor Aspíroz, Feb. 2, 1905 . 1046
Translation..... 1046
Mr. Hay to Señor Aspíroz, Feb. 15, 1905..... 1048
Señor Aspíroz to Mr. Hay, Feb. 21, 1905..... 1048
Translation..... 1049

DIPLOMATIC CORRESPONDENCE—Continued. Page.
OTHER DIPLOMATIC CORRESPONDENCE, CONSTRUING THE BOUNDARY TREATIES BETWEEN THE UNITED STATES AND MEXICO, 1849–1907—Continued.
Period from 1887–1907—Continued.
Señor Aspíroz to Mr. Hay, Mar. 2, 1905 1050
Translation 1051
Mr. Adee to Señor Aspíroz, Mar. 15, 1905 1051
Señor Aspíroz to Mr. Hay, Mar. 16, 1905 1052
Translation 1053
Mr. Adee to Señor Aspíroz, Mar. 18, 1905 1053
Señor Gamboa to Mr. Loomis, June 2, 1905 1054
Translation 1054
Mr. Loomis to Señor Gamboa, June 13, 1905 1055
Mr. Root to Señor Creel, Mar. 5, 1907 1055
Señor Creel to Mr. Root, Mar. 14 1907 1056
Translation 1056
Mr. Thompson to Mr. Root, Mar. 18, 1907 1057
Mr. Thompson to Señor Mariscal, Mar. 11, 1907. 1057
Señor Mariscal to Mr. Thompson, Mar 15,1907 1057
Translation 1058
Mr. Bacon to Señor Creel, Mar. 21, 1907 1058
Señor Creel to Mr. Root, May 21, 1907 1059
Translation 1060
Mr. Root to Señor Creel, May 28, 1907 1060
MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.:
CORRESPONDENCE BETWEEN DEPARTMENT OF INTERIOR AND MAJ. EMORY—
Maj. Emory to Mr. Ewing, Apr. 2, 1849 1063
Maj. Emory to Mr. Stuart, Oct. 1, 1852 1065
Extracts from Commissioner Emory's Report to the Secretary of the Interior, July 29, 1856 1069
CORRESPONDENCE BETWEEN THE SECRETARY OF STATE OF THE UNITED STATES AND THE UNITED STATES COMMISSIONER OF THE INTERNATIONAL BOUNDARY COMMISSION—
Col. Mills to Mr. Gresham, June 21, 1894 1077
Joint Journal of the International Boundary Commission, June 21, 1894—
English text 1078
Spanish text 1079
Report of the Consulting Engineers of the International Boundary Commission, June 16, 1894—
English text 1080
Spanish text 1082

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.—Cont'd. Page.
CORRESPONDENCE BETWEEN THE SECRETARY OF STATE OF THE UNITED STATES AND THE UNITED STATES COMMISSIONER OF THE INTERNATIONAL BOUNDARY COMMISSION—Continued.
Col. Mills to Mr. Gresham, Jan. 15, 1895 1083
Joint Journal of the International Boundary Commission on the general subject of isolated bancos in the Rio Grande, Jan. 15, 1895—
English text 1092
Spanish text 1097
Col. Mills to Mr. Olney, Sept. 25, 1895 1101
Probable decision Banco de Camargo 1102
Probable decision Banco de Vela 1103
Probable decision Banco Granjeno 1104
Probable decision Banco de Santa Margarita 1105
Col. Mills to Mr. Olney, Dec. 11, 1895 1106
Col. Mills to Mr. Olney, Feb. 8, 1896 1108
Mr. Adee to Gen. Mills, June 20, 1908 1109
Gen. Mills to Mr. Knox, Feb. 5, 1910 1110
Mr. Wilson to Gen. Mills, Mar. 29, 1910 1111
Gen. Mills to Mr. Knox, May 14, 1910 1111
Joint Journal of the International Boundary Commission, May 14, 1910, and Report of the Consulting Engineers of the International Boundary Commission, May 4, 1910—
English text 1112
Spanish text 1116
Mr. Wilson to Gen. Mills, June 6, 1910 1120
Gen. Mills to Mr. Knox, Feb. 9, 1911 1121
Joint Journal of the International Boundary Commission, Aug. 1, 1910—
English text 1121
Spanish text 1122
Mr. Frelinghuysen to Mr. Miller, Jan. 9, 1885 1122
Mr. Bowen to Mr. Bayard, June 3, 1886 1123
Mr. Bayard to Mr. Bowen, June 12, 1886 1124
Mr. Bayard to Mr. Sherman, Oct. 1, 1888 1126
Mr. Endicott to Mr. Bayard, Nov. 17, 1888, with inclosure 1128
Mr. Fowler to Mr. Knox, Oct. 1, 1910 1128
Mr. McClelland to Mr. Cushing, Nov. 11, 1856 .. 1129
Proposed statement by International Boundary Commissioner 1129

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.—Cont'd. Page.

EXTRACTS FROM MESSAGES, ETC., OF THE PRESIDENTS OF THE UNITED STATES OF AMERICA, 1849–1910—

Dec., 1849 1130
Dec., 1851 1130
Dec., 1852 1131
Dec., 1853 1132
June, 1856 1133
Dec., 1876 1134
Dec., 1884 1134
Dec., 1886 1134
Mar., 1889 1135
Dec., 1891 1135
Dec., 1898 1136
Dec., 1899 1136
Dec., 1900 1136
Dec., 1910 1137

EXTRACTS FROM MESSAGES OF THE PRESIDENTS OF THE UNITED STATES OF MEXICO, 1885–1896—

Sept., 1885 1137
Translation 1137
Sept., 1886 1137
Translation 1137
Apr., 1888 1138
Translation 1138
Apr., 1889 1138
Translation 1138
Sept., 1889 1139
Translation 1139
Sept., 1890 1139
Translation 1139
Apr., 1891 1139
Translation 1140
Apr., 1892 1140
Translation 1140
Sept., 1892 1140
Translation 1141
Apr., 1894 1141
Translation 1141
Sept., 1894 1142
Translation 1142
Apr., 1895 1142
Translation 1142
Sept., 1896 1143
Translation 1143

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS, ETC.—Cont'd. Page.

EXTRACTS FROM MESSAGES OF THE PRESIDENTS OF THE UNITED STATES OF MEXICO, 1897–1905—Continued.

Apr., 1897 1144
Translation 1144
Sept., 1897 1144
Translation 1144
Apr., 1898 1145
Translation 1145
Sept., 1898 1145
Translation 1146
Apr., 1899 1146
Translation 1146
Sept., 1899 1147
Translation 1147
Apr., 1900 1148
Translation 1148
Apr., 1905 1148
Translation 1149

STATUTES OF THE UNITED STATES OF AMERICA, ETC.—

Act of July 28, 1882, authorizing the construction of a street railway and wagon road bridge over the Rio Grande, between the City of El Paso, Tex., and Paso del Norte, Mexico 1149

Act of Sept. 6, 1888, authorizing the construction and operation of a street railway and wagon bridge across the Rio Grande between El Paso, Tex., and Paso del Norte, Mexico 1150

Resolution passed by the House of Representatives of the United States of America, Sept. 25, 1888, authorizing the President to negotiate with the Government of Mexico for the establishment of an International Commission 1151

Act of Feb. 1, 1897, authorizing the construction or acquisition of a bridge across the Rio Grande at El Paso, Tex 1152

OPINION OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA IN THE CASE OF NEBRASKA *v.* IOWA, RENDERED FEB. 29, 1892 1154

TERMS OF SUBMISSION

CONVENTION OF JUNE 24, 1910, FOR THE ARBITRATION OF THE CHAMIZAL CASE, AND SUPPLEMENTARY PROTOCOL

BOUNDARY TREATIES AND CONVENTIONS UNITED STATES AND MEXICO 1828–1905

RULES AND REGULATIONS OF THE INTERNATIONAL BOUNDARY COMMISSION

71210—11——1

1910.

CONVENTION FOR THE ARBITRATION OF THE CHAMIZAL CASE.[a]

The United States of America and the United States of Mexico, desiring to terminate, in accordance with the various treaties and conventions now existing between the two countries, and in accordance with the principles of international law, the differences which have arisen between the two Governments as to the international title to the Chamizal tract, upon which the members of the International Boundary Commission have failed to agree, and having determined to refer these differences to the said Commission, established by the Convention of 1889, which for this case only shall be enlarged as hereinafter provided, have resolved to conclude a Convention for that purpose, and have appointed as their respective Plenipotentiaries:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States of America; and

The President of the United States of Mexico, Don Francisco León de la Barra, Ambassador Extraordinary and Plenipotentiary of the United States of Mexico at Washington;

Who, after having exhibited their respective full powers, and having found the same to be in good and due form, have agreed upon the following articles:

ARTICLE I.

The Chamizal tract in dispute is located at El Paso, Texas, and Ciudad Juarez, Chihuahua, and is bounded westerly and southerly by the middle of the present channel of the Rio Grande, otherwise called Rio Bravo del Norte, easterly by the middle of the abandoned channel of 1901, and northerly by the middle of the channel of the river as surveyed by Emory and Salazar in 1852, and is substantially as shown on a map on a scale of 1–5,000, signed by General Anson Mills, Commissioner on the part of the United States, and Señor Don F. Javier Osorno, Commissioner on

[a] Signed at Washington June 24, 1910; ratifications advised by the Senate of the United States December 12, 1910; ratified by the President of the United States January 23, 1911; ratifications exchanged at Washington, January 24, 1911; proclaimed January 25, 1911.

the part of Mexico, which accompanies the report of the International Boundary Commission, in Case No. 13, entitled "Alleged Obstruction in the Mexican End of the El Paso Street Railway Bridge and Backwaters Caused by the Great Bend in the River Below", and on file in the archives of the two Governments.

ARTICLE II.

The difference as to the international title of the Chamizal tract shall be again referred to the International Boundary Commission, which shall be enlarged by the addition, for the purposes of the consideration and decision of the aforesaid difference only, of a third Commissioner, who shall preside over the deliberations of the Commission. This Commissioner shall be a Canadian jurist and shall be selected by the two Governments by common accord, or, failing such agreement, by the Government of Canada, which shall be requested to designate him. No decision of the Commission shall be perfectly valid unless the Commission shall have been fully constituted by the three members who compose it.

ARTICLE III.

The Commission shall decide solely and exclusively as to whether the international title to the Chamizal tract is in the United States of America or Mexico. The decision of the Commission, whether rendered unanimously or by majority vote of the Commissioners, shall be final and conclusive upon both Governments, and without appeal. The decision shall be in writing and shall state the reasons upon which it is based. It shall be rendered within thirty days after the close of the hearings.

ARTICLE IV.

Each Government shall be entitled to be represented before the Commission by an Agent and such Counsel as it may deem necessary to designate; the Agent and Counsel shall be entitled to make oral argument and to examine and cross-examine witnesses and, provided that the Commission so decides, to introduce further documentary evidence.

ARTICLE V.

On or before December 1, 1910, each Government shall present to the Agent of the other party two or more printed copies of its case, together with the documentary evidence upon which it

relies. It shall be sufficient for this purpose if each Government delivers the copies and documents aforesaid at the Mexican Embassy at Washington or at the American Embassy at the City of Mexico, as the case may be, for transmission. As soon thereafter as possible, and within ten days, each party shall deliver two printed copies of its case and accompanying documentary evidence to each member of the Commission. Delivery to the American and Mexican Commissioners may be made at their offices in El Paso, Texas; the copies intended for the Canadian Commissioner may be delivered at the British Embassy at Washington or at the British Legation at the City of Mexico.

On or before February 1, 1911, each Government may present to the Agent of the other a counter-case, with documentary evidence, in answer to the case and documentary evidence of the other party. The counter-case shall be delivered in the manner provided in the foregoing paragraph.

The Commission shall hold its first session in the city of El Paso, State of Texas, where the offices of the International Boundary Commission are situated, on March 1, 1911, and shall proceed to the trial of the case with all convenient speed, sitting either at El Paso, Texas, or Ciudad Juarez, Chihuahua, as convenience may require. The Commission shall act in accordance with the procedure established in the Boundary Convention of 1889. It shall, however, be empowered to adopt such rules and regulations as it may deem convenient in the course of the case.

At the first meeting of the three Commissioners each party shall deliver to each of the Commissioners and to the Agent of the other party, in duplicate, with such additional copies as may be required, a printed argument showing the points relied upon in the case and counter-case, and referring to the documentary evidence upon which it is based. Each party shall have the right to file such supplemental printed brief as it may deem requisite. Such briefs shall be filed within ten days after the close of the hearings, unless further time be granted by the Commission.

ARTICLE VI.

Each Government shall pay the expenses of the presentation and conduct of its case before the Commission; all other expenses which by their nature are a charge on both Governments, including the honorarium for the Canadian Commissioner, shall be borne by the two Governments in equal moieties.

ARTICLE VII.

In case of the temporary or permanent unavoidable absence of any one of the Commissioners, his place will be filled by the Government concerned, except in the case of the Canadian jurist. The latter under like circumstances shall be replaced in accordance with the provisions of this Convention.

ARTICLE VIII.

If the arbitral award provided for by this Convention shall be favorable to Mexico, it shall be executed within the term of two years, which can not be extended, and which shall be counted from the date on which the award is rendered. During that time the *status quo* shall be maintained in the Chamizal tract on the terms agreed upon by both Governments.

ARTICLE IX.

By this Convention the Contracting Parties declare to be null and void all previous propositions that have reciprocally been made for the diplomatic settlement of the Chamizal Case; but each party shall be entitled to put in evidence by way of information such of this official correspondence as it deems advisable.

ARTICLE X.

The present Convention shall be ratified in accordance with the constitutional forms of the Contracting Parties and shall take effect from the date of the exchange of its ratifications.

The ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and Spanish languages, and have hereunto affixed their seals.

Done in duplicate at the City of Washington, this 24th day of June, one thousand nine hundred and ten.

PHILANDER C KNOX [SEAL.]
F. L. DE LA BARRA. [SEAL.]

SUPPLEMENTARY PROTOCOL.

The Plenipotentiaries who negotiated and signed the Convention of June 24, 1910, for the arbitration of the Chamizal Case, being thereunto duly empowered by their respective Governments, have agreed upon the following supplementary procotol:

Whereas it has become necessary, owing to the lapse of time, that the dates fixed by Article V of the before-mentioned Convention be changed, it is hereby agreed as follows:

The date for the presentation of the respective cases and documentary evidence is fixed for February 15, 1911;

The date for the presentation of the respective countercases and documentary evidence is fixed for April 15, 1911;

The date for the first session of the Commission is fixed for May 15, 1911.

All other provisions of the Convention of June 24, 1910, remain unchanged.

This supplementary protocol shall be ratified in accordance with the constitutional forms of the Contracting Parties and shall take effect from the date of the exchange of its ratifications.

The ratifications of the Convention and the supplementary pro tocol shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the above supplementary protocol, both in the English and Span ish languages, and have hereunto affixed their seals.

Done in duplicate at the City of Washington, this fifth day of December, one thousand nine hundred and ten.

[SEAL.] PHILANDER C KNOX
[SEAL.] F. L. DE LA BARRA

[Spanish text.]

1910.

CONVENCIÓN DE ARBITRAJE PARA EL CASO DE "EL CHAMIZAL."

Los Estados Unidos de América y los Estados Unidos Mexicanos, deseando terminar de acuerdo con los varios Tratados y Convenciones vigentes entre los dos países, y según los principios del Derecho Internacional, las diferencias que han surgido entre los dos Gobiernos respecto del dominio eminente sobre el territorio de "El Chamizal", acerca del cual no han podido ponerse de acuerdo los miembros de la Comisión Internacional de Límites, y habiendo determinado someter estas diferencias á dicha Comisión establecida por la Convención de 1889, que unicamente para este caso se ampliará como se estipula adelante, han resuelto celebrar una Convención con ese objeto, y han nombrado como sus respectivos Plenipotenciarios:

El Presidente de los Estados Unidos de América al Señor Philander C. Knox, Secretario de Estado de los Estados Unidos de América, y

El Presidente de los Estados Unidos Mexicanos al Señor Don Francisco León de la Barra, Embajador Extraordinario y Plenipotenciario de los Estados Unidos Mexicanos en Washington,

Quienes, después de haberse mostrado sus respectivos Plenos Poderes y de haberlos encontrado en buena y debida forma, han convenido en los artículos siguientes:

ARTÍCULO I.

El territorio de "El Chamizal" en disputa, está situado en Ciudad Juárez, Chihuahua, y El Paso, Texas, y tiene por límites hacia el Poniente y Sur la linea media del actual cauce del Río Bravo del Norte, llamado por otro nombre Río Grande, al Este la linea media del cauce abandonado en 1901, y al Norte la linea media del cauce del río, según fue localizado por Emory y Salazar en 1852, y que está aproximadamente fijado en el plano á una escala de 1 sobre 5,000, firmado por el General Anson Mills, Comisionado por parte de los Estados Unidos, y por el Señor Don F. Javier Osorno, Comisionado por parte de México, el cual acompaña el informe de la Comisión Internacional de Límites, en el caso número 13, llamado "Pretendidas obstrucciónes en el extremo mexicano del Puente de Tranvias de El Paso é inundación causada por el retroceso de las aguas, debido á la Gran Vuelta abajo del Río", que consta en los archivos de ambos Gobiernos.

ARTÍCULO II.

La diferencia respecto del dominio eminente sobre el territorio de "El Chamizal" se someterá de nuevo á la Comisión Internacional de Límites, la cual, sólo para estudiar y decidir la diferencia antedicha, será aumentada con un Tercer Comisionado que presidirá sus deliberaciones. Este Comisionado será un jurista canadiense escogido por ambos Gobiernos de común acuerdo ó, á falta de este acuerdo, por el Gobierno del Canadá, á quien se pedirá que lo designe. Para la perfecta validez de todas las resoluciones de la Comisión tendrá ésta que haber sido integrada precisamente por los tres miembros que la componen.

ARTÍCULO III.

La Comisión decidirá única y exclusivamente si el dominio eminente sobre el territorio de "El Chamizal" corresponde á los Estados Unidos de América ó á México. El fallo de la Comisión, ya sea que se dé unánimemente, ó por mayoría de votos de

los Comisionados, será final y definitivo é inapelable para ambos Gobiernos. Dicho fallo se dará por escrito, estableciendo las razones en que se funde y se pronunciará dentro de treinta días después de la clausura de las audiencias.

ARTÍCULO IV.

Cada Gobierno tendrá derecho á estar representado ante la Comisión por un Agente y por los abogados que estime necesario designar. El Agente y los abogados tendrán derecho á presentar argumentos orales y á examinar y repreguntar testigos y, siempre que así lo acuerde la Comisión, también á introducir nuevos documentos de prueba.

ARTÍCULO V.

El primero de Diciembre de 1910, ó antes, cada uno de los dos Gobiernos presentará al Agente de la otra Parte, dos á más ejemplares impresos de los alegatos y las pruebas documentales en que funde su derecho. Será suficiente á efecto de cumplir esta prevención, que cada Gobierno entregue dichos ejemplares y sus anexos á la Embajada Mexicana en Washington ó á la Embajada de los Estados Unidos de América en la Ciudad de México, según el caso, para su remisión. Tan pronto como sea posible, no excediéndose de un plazo de diez días, cada Parte entregará tambien á cada uno de los miembros de la Comisión dos ejemplares impresos de sus alegatos y de las pruebas documentales en que se apoye. La entrega al Comisionado Mexicano y al Comisionado Americano puede hacerse en las oficinas de éstos en El Paso, Texas. Los ejemplares destinados al Comisionado Canadiense podrán entregarse en la Embajada Británica en Washington ó en la Legación Británica en la Ciudad de México.

El primero de Febrero de 1911, ó antes de esa fecha, cada Gobierno podrá presentar al Agente del otro una réplica con las pruebas documentales en que se funde, para contestar, tanto los alegatos, cuanto las pruebas documentales de la Parte contraria. La réplica se entregará según la forma convenida en el inciso anterior.

El primero de Marzo de 1911 la Comisión celebrará su primera sesión en la ciudad de El Paso, Estado de Texas, donde están situadas las oficinas de la Comisión Internacional de Límites, y procederá á juzgar del caso con toda la celeridad conveniente,

teniendo para ello sus sesiones, ya sea en Ciudad Juárez, Chihuahua, ó en El Paso, Texas, según lo requieran las conveniencias. La Comisión se ajustará al procedimiento establecido en la Convención de Límites de 1889, pero estará facultada, sin embargo, para adoptar la reglamentación que estime conveniente en la secuela del caso.

En la primera sesión de los tres Comisionados, cada Parte entregará á cada uno de los Comisionados y al Agente de la otra Parte, por duplicado y con los ejemplares adicionales que se requieran, un alegato impreso que contendrá los fundamentos del caso y la réplica, refiriéndose á las pruebas documentales que los refuercen. Cada Parte tendrá el derecho de presentar cuantos alegatos impresos suplementarios juzgue indispensables. Los alegatos suplementarios serán presentados dentro de un período de diez días, que se contará á partir de la clausura de las audiencias, á menos que la Comisión conceda un plazo más largo.

ARTÍCULO VI.

Cada Gobierno pagará los gastos que causen su representación y gestiones ante la Comisión. Todos los demás, que por su naturaleza pertenezcan á entrambos Gobiernos, inclusos los honorarios del Comisionado canadiense, los cubrirán los dos por partes iguales.

ARTÍCULO VII.

En caso de ausencia temporal ó permanente, por causa de fuerza mayor, de alguno de los Comisionados, el que falte será substituido por el Gobierno correspondiente, si no se trata del jurista canadiense. Este, en iguales circunstancias, será remplazado conforme á las mismas bases expresadas en esta Convención.

ARTÍCULO VIII.

Si el laudo arbitral de que se trata fuere favorable á México, su cumplimiento se llevará á efecto dentro del plazo improrrogable de dos años, que se contarán á partir de la fecha en que aquél se pronuncie. Durante este tiempo se mantendrá el *statu-quo* en el territorio de "El Chamizal" en los términos convenidos por ambos Gobiernos.

ARTÍCULO IX.

En virtud de la presente Convención, ambas Partes contratantes declaran nulas y sin ningún valor las propuestas anteriores que

recíprocamente se han hecho para el arreglo diplomático del caso de "El Chamizal"; pero cada Parte podrá exhibir, por vía de información, la correspondencia oficial que estime conveniente.

ARTÍCULO X.

La presente Convención se ratificará de acuerdo con los preceptos constitucionales de cada Parte contratante y entrará en vigor desde la fecha del canje de las ratificaciones.

Las ratificaciones se canjearán en Washington tan pronto como sea posible.

En testimonio de lo cual, los Plenipotenciarios ya dichos han firmado, tanto el texto castellano como el inglés de los artículos anteriores, poniéndoles sus sellos respectivos.

Hecha, por duplicado, en la ciudad de Washington, hoy día 24 de Junio de mil novecientos diez.

PHILANDER C. KNOX. [SEAL.]
F. L. DE LA BARRA. [SEAL.]

[Spanish text.]

[SUPPLEMENTARY PROTOCOL.]

Los Plenipotenciarios que negociaron y firmaron la Convención de 24 de Junio de 1910 para el arbitraje del Caso del Chamizal, debidamente autorizados por sus respectivos Gobiernos, han convenido en el siguiente protocolo adicional:

Por haberse hecho necesario, debido al transcurso del tiempo, que las fechas fijadas en el Artículo V de la Convención arriba mencionada sean cambiadas, por medio del presente se conviene en lo que sigue:

Se fija el 15 de Febrero de 1911 como fecha para la presentación de los alegatos respectivos y de las pruebas documentarias;

Se fija el 15 de Abril de 1911 como fecha para la presentación de las réplicas respectivas y de las pruebas documentarias;

Se fija el 15 de Mayo de 1911 como fecha para la primera sesión de la Comisión.

Las demás prevenciones de la Convención de 24 Junio de 1910 no sufren cambio alguno.

Este protocolo adicional se ratificará de acuerdo con los preceptos constitucionales de cada Parte contratante y entrará en vigor desde la fecha del canje de las ratificaciones.

Las ratificaciones de esta Convención y del Protocolo adicional se canjearán en Washington tan pronto como sea posible.

En testimonio de lo cual los Plenipotenciarios respectivos han firmado y sellado tanto el texto inglés como el texto español del protocolo adicional precedente.

Hecho por duplicado, en la ciudad de Washington, hoy día cinco de Diciembre del año mil novecientos diez.

PHILANDER C. KNOX, [SEAL.]
F. L. DE LA BARRA. [SEAL.]

BOUNDARY TREATIES AND CONVENTIONS BETWEEN THE UNITED STATES AND MEXICO, 1828–1905.

1828.[a]

TREATY OF LIMITS BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES.[b]

The limits of the United States of America with the bordering territories of Mexico having been fixed and designated by a solemn treaty concluded and signed at Washington on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, between the respective Plenipotentiaries of the Government of the United States of America on the one part and of that of Spain on the other; And whereas, the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States.

With this intention, the President of the United States of America has appointed Joel Roberts Poinsett their Plenipotentiary; and the President of the United Mexican States their Excellencies Sebastian Camacho and José Ygnacio Esteva:

And the said Plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles:

ARTICLE FIRST.

The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon by the above-mentioned treaty of Washington concluded and signed on the twenty-second

[a] [Although this treaty of 1828 has been superseded, it is reproduced here on account of the apparent relationship of certain important provisions of the later boundary treaties to the ideas and language of this first treaty of limits.]

[b] [Signed at Washington, January 12, 1828; ratification advised by the Senate of the United States April 4, 1832; ratified by the President of the United States April 5, 1832; ratifications exchanged at Washington April 5, 1832; proclaimed April 5, 1832.]

day of February, in the year one thousand eight hundred and [illegible], the said high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are hereby recited, as follows:

ARTICLE SECOND.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then, following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas, thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas river shall be found to fall north or south of latitude [illegible], then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude [illegible], and thence, along the said parallel, to the South Sea; All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims and pretensions to the territories described by the said line; that is to say: the United States hereby cede to His Catholic Majesty, and renounce forever all their rights, claims, and pretensions to the territories lying west and south of the above described line; and, in like manner, His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories on the east and north of the said line; and, moreover, the said United States and His Catholic Majesty, for themselves, their heirs, and successors, renounce all claim to the

ARTICLE THIRD.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a Commissioner and a Surveyor, who shall meet, before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated, and the line of latitude 42 to the South Sea: They shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

ARTICLE FOURTH.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Washington, within the term of four months, or sooner if possible.

In witness whereof we, the respective Plenipotentiaries, have signed the same, and have hereunto affixed our respective seals.

Done at Mexico this twelfth day of January, in the Year of our Lord one thousand eight hundred and twenty-eight, in the fifty-second year of the Independence of the United States of America, and in the eighth of that of the United Mexican States.

(SEAL) J. R. POINSETT
(SEAL) S. CAMACHO.
(SEAL) J. Y. ESTEVA.

[Spanish text.]

TRATADO DE LIMITES ENTRE LOS ESTADOS UNIDOS DE MEGICO Y LOS ESTADOS UNIDOS DE AMERICA.

[1828.]

Habiendose fijado y designado los limites de los Estados Unidos de America con los territorios limitrofes de Megico por un tratado solemne, concluido y firmado en Washington, á veinte y dos de Febrero, de mil ochocientos diez y nueve, entre los Plenipotenciarios respectivos del Gobierno de los Estados Unidos por una parte,

y de España por la otra; por tanto, y en consideracion á que dicho tratado recibio su sancion en una epoca en que Megico formaba una parte de la Monarquia Española, se ha creido necesario al presente, declarar, y confirmar la validez de dicho Tratado considerandolo vigente y obligatorio entre los Estados Unidos de Megico y los Estados Unidos de America: En consecuencia han sido nombrados los respectivos Plenipotenciarios, á saber:

El Presidente de los Estados Unidos de Megico á sus Excelencias los Señores Sebastian Camacho, y José Ygnacio Esteva: y el Presidente de los Estados Unidos de America al Señor Joel Roberts Poinsett, su Enviado Extraordinario, y Ministro Plenipotenciario cerca del Gobierno de los Estados Unidos de Megico. Los que despues de haber cambiado sus plenos poderes, y hallados en buena, y debida forma han convenido y concluido los articulos siguientes:

ARTICULO PRIMERO.

Siendo los limites divisorios de los Estados Unidos de Megico, y de los Estados Unidos de America en los terrenos colindantes de ambas Republicas los mismos que se acordaron, y fijaron en el dicho Tratado de Washington fho, á veinte y dos de Febrero de mil ochocientos diez y nueve, se procederá inmediatamente á poner en ejecucion entre las dos dichas partes contratantes los articulos tercero, y cuarto de dicho Tratado, que á continuacion se insertan:

ARTICULO SEGUNDO.

La linea divisoria entre los dos paises, al occidente del Misisipi arrancará del seno Megicano en la embocadura del rio Sabina en el mar, seguirá al norte, por la orilla occidental de este rio hasta el grado 32 de latitud; desde allí, por una linea recta al norte hasta el grado de latitud, en que entra en el rio Rojo de Natchitoches, *Red river*, y continuará por el curso del rio Rojo al oeste hasta el grado 100 de longitud occidental de Londres, y 23 de Washington, en que cortará este rio y seguirá, por una linea recta al norte, por el mismo grado hasta el rio Arkansas, cuya orilla meridional seguirá hasta su nacimiento en el grado 42 de latitud septentrional, y desde dicho punto se tirará una linea recta por el mismo paralelo de latitud, hasta el mar del Sur: todo segun el Mapa de los Estados Unidos, de Melish, publicado en Filadelfia y perfeccionado en 1818. Pero si el nacimiento del rio Arkansas se hallase al norte, ó sur de dho grado 42 de latitud, seguirá la linea desde el origen de dicho

rio recta al Sur, ó norte, segun fuese necesario, hasta que encuentre el espresado grado 42 de latitud, y desde alli por el mismo paralelo hasta el mar del Sur. Pertenecerán á los Estados Unidos todas las islas de los rios Sabina, Rojo de Natchitoches, y Arkansas, en la estension de todo el curso descrito; pero el uso de las aguas, y la navigacion del Sabina, hasta el mar, y de los espresados rios Rojo y Arkansas, en toda la estension de sus mencionados limites en sus respectivas orillas será comun á los habitantes de las dos naciones.

Las dos altas partes contratantes convienen en ceder, y renunciar todos sus derechos, reclamaciones y pretensiones sobre los territorios que se describen en esta linea, á saber, los Estados Unidos de America ceden á S. M. C. y renuncian para siempre todos sus derechos, reclamaciones, y pretensiones, á cualesquiera territorios situados al oeste, y al sur de dicha linea; y S. M. C. en igual forma, renuncia, y cede para siempre por sí y á nombre de sus herederos y sucesores, todos los derechos que tiene sobre los territorios al este y al norte de la misma linea arriba descrita.

ARTICULO TERCERO.

Para fijar esta linea con mas precision, y establecer los mojones que señalen con ecsactitud los limites de ambas naciones nombrará cada una de ellas un Comisario, y un Geometra que se juntarán antes del termino de un año contado desde la fecha de la ratificacion de este Tratado, en Natchitoches, en las orillas del rio Rojo, y procederán á señalar, y demarcar dicha linea desde la embocadura del Sabina hasta el rio Rojo, y de este hasta el rio Arkansas y averiguar con certidumbre el origen del espresado rio Arkansas, y fijar segun queda estipulado, y convenido en este Tratado, la linea que debe seguir desde el grado 42 de latitud hasta el mar Pacifico. Llevarán diarios, y levantaran planos de sus operaciones, y el resultado convenido por ellos se tendrá por parte de este Tratado, y tendrá la misma fuerza que se estuviese inserto en el, debiendo convenir, amistosamente los dos Gobiernos en el arreglo de cuanto necesiten estos individuos y en la escolta respectiva que deban llevar siempre que se crea necesario.

ARTICULO CUARTO.

El presente tratado será ratificado y las ratificaciones serán cambiadas en Washington en el termino de cuatro meses ó antes, si posible fuere.

En fe de lo cual, los respectivos Plenipotenciarios han firmado el presente, sellandolo con sus sellos respectivos.

Fecho en Megico, á los doce dias del mes de Enero, del año del Señor mil ochocientos veinte y ocho, octavo de la Independencia de los Estados Unidos de Megico, y 52° de la de los Estados Unidos de America.

S. CAMACHO. [L. S.]
J. Y. ESTEVA. [L. S.]
J. R. POINSETT. [L. S.]

1848.

[TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT. [a]]

[Treaty of Guadalupe Hidalgo.]

In the name of Almighty God:

The United States of America, and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence, wherein the two Peoples should live, as good Neighbours, have for that purpose appointed their respective Plenipotentiaries: that is to say, the President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic; who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of Peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic.

ARTICLE I.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective Countries, territories, cities, towns and people, without exception of places or persons.

[a] Signed at Guadalupe Hidalgo February 2, 1848; ratification advised by the Senate of the United States, with amendments, March 10, 1848; ratified by the President of the United States March 16, 1848; ratifications exchanged at Queretaro May 30, 1848; proclaimed July 4, 1848.

ARTICLE II.

Immediately upon the signature of this Treaty, a convention shall be entered into between a Commissioner or Commissioners appointed by the General in Chief of the forces of the United States, and such as may be appointed by the Mexican Government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III.

Immediately upon the ratification of the present treaty by the Government of the United States, orders shall be transmitted to the Commanders of their land and naval forces, requiring the latter, (provided this Treaty shall then have been ratified by the Government of the Mexican Republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports; and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points, that shall be selected by common agreement, at a distance from the sea-ports, not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay: the Mexican Government hereby binding itself to afford every facility in it's power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner, orders shall be despatched to the persons in charge of the Custom Houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican Government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such Custom Houses, or elsewhere in Mexico, by authority of the United States, from and after the day of ratification of this Treaty by the Government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of

collection, shall be delivered to the Mexican Government, at the City of Mexico, within three months after the exchange of ratifications.

The evacuation of the Capital of the Mexican Republic by the Troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV.

Immediately after the exchange of ratifications of the present treaty, all castles, forts, territories, places and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic; as about to be established by the following Article, shall be definitively restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the Government of the Mexican Republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulation, as regards the restoration of artillery, apparatus of war, &c.

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner, if possible: the Mexican Government hereby engaging, as in the foregoing Article, to use all means in it's power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico; in such case a friendly arrangement shall be entered into between the General in Chief of the said troops and the Mexican Government, whereby healthy and otherwise suitable places at a distance

from the ports not exceeding thirty leagues shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to, as comprehending the sickly season, shall be understood to extend from the first day of May to the first day of November.—

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following Article, the Government of the said United States will exact the release of such captives, and cause them to be restored to their country.

ARTICLE V.

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of it's deepest branch, if it should have more than one branch emptying directly into the sea; from thence, up the middle of that river, following the deepest channel, where it has more than one to the point where it strikes the Southern boundary of New Mexico; thence, westwardly along the whole Southern Boundary of New Mexico (which runs north of the town called *Paso*) to it's western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then, to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this Article, are those laid down in the Map, entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said Republic, and constructed according to the best authorities. Revised edition. Published at New York in 1847 by J. Disturnell:*" Of which Map a Copy is added to this Treaty, bearing the signatures and seals of the Undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that

the said limit shall consist of a straight line, drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the Coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port, made in the year 1782, by Don Juan Pantoja, second sailing-Master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana:* of which plan a Copy is hereunto added, signed and sealed by the respective Plenipotentiaries.

In order to designate the Boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both Republics, as described in the present Article, the two Governments shall each appoint a Commissioner and a Surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the Port of San Diego, and proceed to run and mark the said Boundary in it's whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result, agreed upon by them, shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The Boundary line established by this Article shall be religiously respected by each of the two Republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with it's own constitution.

ARTICLE VI.

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below it's confluence with the Gila, to and from their possessions situated north of the Boundary line defined in the preceding Article: it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal or railway, which should, in whole or in part, run upon the river Gila, or upon it's right or it's left bank, within the space of

one marine league from either margin of the river, the Governments of both Republics will form an agreement regarding it's construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth Article, divided in the middle between the two Republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right: not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present Article shall not impair the territorial rights of either Republic, within it's established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present Treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and removing the proceeds wherever they please; without their being subjected, on this account, to any contribution, tax or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But, they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty: and those who shall remain in the said territories, after the expiration of that year, without having declared their intention to retain the character

of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X.

[Stricken out.]

ARTICLE XI.

Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive controul of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme; it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States, whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted: all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within it's own territory against it's own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States, to purchase or acquire any Mexican or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two Republics; nor

to purchase or acquire horses, mules, cattle or property of any kind, stolen within Mexican territory by such Indians;

And, in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the Government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within it's territory, and shall be able so to do, through the faithful exercise of it's influence and power, to rescue them, and return them to their country, or deliver them to the agent or representative of the Mexican Government. The Mexican Authorities will, as far as practicable, give to the Government of the United States notice of such captures; and it's agent shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American Authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence through any other channel, of the existence of Mexican captives within it's territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for it's being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place it's Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth Article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen Millions of Dollars.

Immediately after this Treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three Mil-

lions of dollars shall be paid to the said Government by that of the United States at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve Millions of Dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of Dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions, from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions between the two Republics, severally concluded on the eleventh day of April eighteen hundred and thirty-nine, and on the thirtieth day of January eighteen hundred and forty three: so that the Mexican Republic shall be absolutely exempt for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty: which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the Board of Commissioners provided for in the following Article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding Article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter

millions of dollars. To ascertain the validity and amount of those claims, a Board of Commissioners shall be established by the Government of the United States, whose awards shall be final and conclusive: provided that in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth Articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November one thousand eight hundred and forty-three; and in no case shall an award be made in favour of any claim not embraced by these principles and rules.

If, in the opinion of the said Board of Commissioners, or of the claimants, any books, records or documents in the possession or power of the Government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the Commissioners or the claimants, through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister for Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records or documents, so specified, which shall be in their possession or power, (or authenticated copies or extracts of the same) to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said Board of Commissioners: provided That no such application shall be made, by, or at the instance of, any claimant, until the facts which it is expected to prove by such books, records or documents, shall have been stated under oath or affirmation.

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within it's territory, it may judge proper so to fortify, for it's security.

ARTICLE XVII.

The Treaty of Amity, Commerce and Navigation, concluded at the city of Mexico on the fifth day of April A. D. 1831, between the United States of America and the United Mexican States, except the additional Article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this

treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.—

ARTICLE XVIII.

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops, previous to the final evacuation thereof, although subsequently to the restoration of the Custom Houses at such ports, shall be entirely exempt from duties and charges of any kind: the Government of the United States hereby engaging and pledging it's faith to establish and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles, other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end, it shall be the duty of all officers and agents of the United States to denounce to the Mexican Authorities at the respective ports, any attempts at a fraudulent abuse of this stipulation, which they may know of or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto: and every such attempt, when duly proved and established by sentence of a competent tribunal, shall be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX.

With respect to all merchandise, effects and property whatsoever, imported into ports of Mexico, whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

I. All such merchandise, effects and property, if imported previously to the restoration of the Custom Houses to the Mexican Authorities, as stipulated for in the third Article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.

II. The same perfect exemption shall be enjoyed by all such merchandise, effects and property, imported subsequently to the restoration of the Custom Houses, and previously to the sixty

days fixed in the following Article for the coming into force of the Mexican tariff at such ports respectively: the said merchandise, effects and property being, however, at the time of their importation, subject to the payment of duties as provided for in the said following Article.

III. All merchandise, effects and property, described in the two rules foregoing, shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax or impost of every kind, under whatsoever title or denomination. Nor shall they be there subjected to any charge whatsoever upon the sale thereof.

IV. All merchandise, effects and property, described in the first and second rules, which shall have been removed to any place in the interior, whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.

V. But if any merchandise, effects or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases, if they had been imported in time of peace through the Maritime Custom Houses, and had there paid the duties, conformably with the Mexican tariff.

VI.—The owners of all merchandise, effects or property, described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port, whilst in the occupation of the forces of the United States, and previously to the restoration of the Custom House at such port, no person shall be required by the Mexican Authorities, whether General or State, to pay any tax, duty or contribution upon any such exportation, or in any manner to account for the same to the said Authorities.

ARTICLE XX.

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the

date of the signature of this treaty and the restoration of the Custom-Houses, conformably with the stipulation in the third Article, in such case, all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said Custom Houses, and previously to the expiration of sixty days after the day of the signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such Custom Houses at the time of the restoration of the same. And to all such merchandise, effects and property, the rules established by the preceding Article shall apply.—

ARTICLE XXI.

If unhappily any disagreement should hereafter arise between the Governments of the two Republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two Nations, the said Governments, in the name of those Nations, do promise to each other, that they will endeavour, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship, in which the two countries are now placing themselves: using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression or hostility of any kind, by the one Republic against the other, until the Government of that which deems itself aggrieved, shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of Commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII.

If (which is not to be expected, and which God forbid!) war should unhappily break out between the two Republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world, to observe the following rules: absolutely, where the nature of the subject permits, and as closely as

possible in all cases where such absolute observance shall be impossible.

I. The merchants of either Republic, then residing in the other, shall be allowed to remain twelve months (for those dwelling in the interior) and six months (for those dwelling at the sea-ports) to collect their debts and settle their affairs; during which periods they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects, without molestation or hinderance: conforming therein to the same laws, which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt, or otherwise destroyed; nor their cattle taken, nor their fields wasted, by the armed force, into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocations.

II. In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for it's own troops. But, if any officer shall break his parole by leaving the

district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole, or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished by the party in whose power they are, with as many rations, and of the same articles as are allowed either in kind or by commutation, to officers of equal rank in it's own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in it's own service: the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended. Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other: which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

And it is declared that neither the pretence that war dissolves all treaties, nor any other whatever shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and during which it's stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

Article XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican Republic, with the previous approbation of it's General Congress: and the ratifications shall be exchanged in the City of Washington, or at

the seat of government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty of Peace, Friendship, Limits and Settlement, and have hereunto affixed our seals respectively. Done in Quintuplicate, at the City of Guadalupe Hidalgo, on the second day of February in the year of Our Lord one thousand eight hundred and forty eight.

N. P. TRIST. [SEAL.]
LUIS G. CUEVAS. [SEAL.]
BERNARDO COUTO [SEAL.]
MIG^{L}. ATRISTAIN. [SEAL.]

[ARTICLES REFERRED TO IN THE FIFTEENTH ARTICLE OF THE PRECEDING TREATY.]

First and Fifth Articles of the unratified Convention between the United States and the Mexican Republic of November 20, 1843.

ARTICLE 1ST.

All claims of citizens of the Mexican Republic against the government of the United States, which shall be presented in the manner and time hereinafter expressed, and all claims of citizens of the United States against the government of the Mexican Republic, which for whatever cause were not submitted to, nor considered, nor finally decided by the commission, nor by the arbiter, appointed by the Convention of 1839, and which shall be presented in the manner and time hereinafter specified, shall be referred to four commissioners, who shall form a Board, and shall be appointed in the following manner, that is to say: Two commissioners shall be appointed by the President of the Mexican Republic, and the other two by the President of the United States, with the approbation and consent of the Senate. The said commissioners thus appointed shall, in presence of each other, take an oath to examine and decide impartially the claims submitted to them, and which may lawfully be considered, according to the proofs, which shall be presented, the principles of right and justice, the Law of Nations, and the Treaties between the two Republics.

ARTICLE 5TH.

All claims of citizens of the United States against the Government of the Mexican Republic, which were considered by the

commissioners, and referred to the umpire appointed under the convention of the 11th April 1839, and which were not decided by him, shall be referred to, and decided by, the umpire to be appointed, as provided by this Convention, on the points submitted to the umpire under the late Convention, and his decision shall be final and conclusive. It is also agreed, that if the respective commissioners shall deem it expedient, they may submit to the said arbiter new arguments upon the said claims.

[Spanish Text]

[TREATY OF GUADALUPE HIDALGO.]

[1848]

En el nombre de Dios Todo-poderoso

Los Estados-Unidos mexicanos y los Estados-Unidos de América, animados de un sincero deseo de poner término á las calamidades de la guerra que desgraciadamente existe entre ambas Repúblicas, y de establecer sobre bases sólidas relaciones de paz y buena amistad, que procuren recíprocas ventajas á los ciudadanos de uno y otro pays, y afianzen la concordia, armonia y mútua seguridad en que deben vivir, como buenos vecinos, los dos pueblos; han nombrado á este efecto sus respectivos Plenipotenciarios; á saber, el Presidente de la República mexicana á Dⁿ. Bernardo Couto, Dⁿ. Miguel Atristain, y Dⁿ. Luis G. Cuevas, ciudadanos de la misma República; y el Presidente de los Estados-Unidos de América á Dⁿ. Nicolás P. Trist, ciudadano de dichos Estados; quienes, despues de haberse comunicado sus plenos poderes, bajo la proteccion del Señor Dios Todo-poderoso, autor de la paz, han ajustado, convenido, y firmado el siguiente

Tratado de Paz, Amistad, Límites y Arreglo definitivo entre la República mexicana y los Estados-Unidos de América.

ARTÍCULO I.

Habrá paz firme y universal entre la República mexicana y los Estados-Unidos de América, y entre sus respectivos paises, territorios, ciudades, villas y pueblos, sin escepcion de lugares ó personas.

ARTÍCULO II.

Luego que se firme el presente Tratado habrá un convenio entre el comisionado ú comisionados del Gobierno mexicano, y el ó los que nombre el General en gefe de las fuerzas de los Estados-Unidos,

para que cesen provisionalmente las hostilidades, y se restablezca en los lugares ocupados por las mismas fuerzas el órden constitucional en lo político, administrativo y judicial, en cuanto lo permitan las circunstancias de ocupacion militar.

ARTÍCULO III.

Luego que este Tratado sea ratificado por el Gobierno de los Estados-Unidos, se expedirán órdenes á sus comandantes de tierra y mar previniendo á estos segundos (siempre que el Tratado haya sido ya ratificado por el Gobierno de la República mexicana, y cangeadas las ratificaciones) que inmediatamente alcen el bloqueo de todos los puertos mexicanos, y mandando á los primeros (bajo la misma condicion) que á la mayor posible brevedad comiencen á retirar todas las tropas de los Estados Unidos que se halláren entonces en el interior de la República mexicana, á puntos que se elegirán de comun acuerdo, y que no distarán de los puertos mas de treinta leguas: esta evacuacion del interior de la República se consumará con la menor dilacion posible, comprometiéndose á la vez el Gobierno mexicano á facilitar, cuanto quêpa en su arbitrio, la evacuacion de las tropas americanas; á hacer cómodas su marcha y su permanencia en los nuevos puntos que se elijan; y á promover una buena inteligencia entre ellas y los habitantes. Igualmente se librarán órdenes á las personas encargadas de las Aduanas marítimas en todos los puertos ocupados por las fuerzas de los Estados-Unidos, previniéndoles (bajo la misma condicion) que pongan inmediatamente en posesion de dichas aduanas á las personas autorizadas por el Gobierno mexicano para recibirlas, entregándoles al mismo tiempo todas las obligaciones y constancias de deudas pendientes por derechos de importacion y exportacion, cuyos plazos no estén vencidos. Ademas se formará una cuenta fiel y exacta que manifieste el total monto de los derechos de importacion y exportacion recaudados en las mismas aduanas marítimas, ó en cualquiera otro lugar de México, por autoridad de los Estados-Unidos desde el dia de la ratificacion de este Tratado por el Gobierno de la República mexicana; y tambien una cuenta de los gastos de recaudacion: y la total suma de los derechos cobrados, deducidos solamente los gastos de recaudacion, se entregará al Gobierno mexicano en la ciudad de México á los tres meses del cange de las ratificaciones.

La evacuacion de la capital de la República mexicana por las tropas de los Estados-Unidos, en consecuencia de lo que queda

estipulado, se completará al mes de recibirse por el comandante de dichas tropas las órdenes convenidas en el presente artículo, ó antes si fuere posible.

ARTÍCULO IV.

Luego que se verifique el cange de las ratificaciones del presente Tratado, todos los castillos, fortalezas, territorios, lugares y posesiones que hayan tomado ú ocupado las fuerzas de los Estados-Unidos, en la presente guerra, dentro de los límites que por el siguiente artículo van á fijarse á la República mexicana, se devolverán definitivamente á la misma República, con toda la artilleria, armas, aparejos de guerra, municiones y cualquiera otra propiedad pública existente en dichos castillos y fortalezas cuando fueron tomados, y que se conserve en ellos al tiempo de ratificarse por el Gobierno de la República mexicana el presente tratado. A este efecto, inmediatamente despues que se firme, se expedirán órdenes á los oficiales americanos que mandan dichos castillos y fortalezas para asegurar toda la artilleria, armas, aparejos de guerra, municiones, y cualquiera otra propiedad pública, la cual no podrá en adelante removerse de donde se halla, ni destruirse. La ciudad de México dentro de la linea interior de atrincheramientos que la circundan, queda comprendida en la precedente estipulacion en lo que toca á la devolucion de artilleria, aparejos de guerra, etc^{a}.

La final evacuacion del territorio de la República mexicana por las fuerzas de los Estados-Unidos quedará consumada á los tres meses del cange de las ratificaciones, ó antes si fuere posible, comprometiéndose á la vez el Gobierno mexicano, como en el artículo anterior, á usar de todos los medios que estén en su poder para facilitar la tal evacuacion hacerla cómoda á las tropas americanas, y promover entre ellas y los habitantes una buena inteligencia.

Sin embargo, si la ratificacion del presente Tratado por ambas partes no tuviera efecto en tiempo que permita que el embarque de las tropas de los Estados-Unidos se complete antes de que comience la estacion malsana en los puertos mexicanos del golfo de México, en tal caso, se hará un arreglo amistoso entre el Gobierno mexicano y el General en gefe de dichas tropas, y por medio de este arreglo se señalarán lugares salubres y convenientes (que no disten de los puertos mas de treinta leguas) para que residan en ellos hasta la vuelta de la estacion sana las tropas que aun no se hayan embarcado. Y queda entendido que el espacio de tiempo de que aquí se habla, como comprensivo de la estacion malsana, se ex-

tiende desde el dia primero de Mayo hasta el dia primero de Noviembre.

Todos los prisioneros de guerra tomados en mar ó tierra por ambas partes, se restituirán á la mayor brevedad posible despues del cange de las ratificaciones del presente Tratado. Queda tambien convenido que si algunos mexicanos estuvieren ahora cautivos en poder de alguna tríbu salvage dentro de los límites que por el siguiente artículo van á fijarse á los Estados-Unidos, el Gobierno de los mismos Estados-Unidos exigirá su libertad y los hará restituir á su pays.

ARTÍCULO V.

La linea divisoria entre las dos Repúblicas comenzará en el golfo de México tres leguas fuera de tierra frente á la desembocadura del Rio Grande, llamado por otro nombre Rio Bravo del Norte, ó del mas profundo de sus brazos, si en la desembocadura tuviére varios brazos: correrá por mitad de dicho rio, siguiendo el canal mas profundo, donde tenga mas de un canal, hasta el punto en que dicho rio corta el lindero meridional de Nuevo-México; continuará luego hácia occidente por todo este líndero meridional (que corre al norte del pueblo llamado *Paso*) hasta su término por el lado de occidente: desde allí subirá la linea divisoria hácia el norte por el lindero occidental de Nuevo-México hasta donde este lindero esté cortado por el primer brazo del rio Gila; (y si no está cortado por ningun brazo del rio Gila, entonces hasta el punto del mismo lindero occidental mas cercano al tal brazo[a], y de allí en una línea recta al mismo brazo]) : continuará despues por mitad de este brazo y del rio Gila hasta su confluencia con el rio Colorado; y desde la confluencia de ambos rios la linea divisoria, cortando el Colorado, seguirá el límite que separa la Alta de la Baja California hasta el mar Pacífico.

Los linderos meridional y occidental de Nuevo-México, de que habla este artículo, son los que se marcan en la carta titulada: *Mapa de los Estados-Unidos de México, segun lo organizado y definido por las varias actas del Congreso de dicha Republica, y construido por las mejores autoridades: edicion revisada que publicó en Nueva-York en 1847 J. Disturnell,* de la cual se agrega un ejemplar al presente Tratado, firmado y sellado por los Plenipotenciarios infrascriptos. Y para evitar toda dificultad al trazar sobre la tierra el límite que separa la Alta de la Baja California, queda convenido que dicho

[a The bracketed text does not appear in the original signed treaty in the archives of the Department of State, but appears in the exchange copy received from the Government of Mexico at the exchange of ratifications.]

límite consistirá en una linea recta tirada desde la mitad del rio Gila en el punto donde se une con el Colorado, hasta un punto en la costa del mar Pacífico, distante una legua marina al Sur del punto mas meridional del puerto de San Diego, segun este puerto está dibujado en el Plano que levantó el año de 1782 el segundo Piloto de la Armada Española Don Juan Pantoja, y se publicó en Madrid el de 1802, en el átlas para el viage de las goletas Sutíl y Mexicana: del cual Plano se agrega copia firmada y sellada por los Plenipotenciarios respectivos.

Para consignar la línea divisoria con la precision debida en mapas fehacientes, y para establecer sobre la tierra mojones que pongan á la vista los límites de ambas Repúblicas, segun quedan descritos en el presente artículo, nombrará cada uno de los dos Gobiernos un comisario y un agrimensor que se juntarán antes del término de un año contado desde la fecha del cange de las ratificaciones de este Tratado, en el puerto de San Diego, y procederán á señalar y demarcar la expresada linea divisoria en todo su curso hasta la desembocadura del rio Bravo del Norte. Llevarán diarios y levantarán planos de sus operaciones; y el resultado convenido por ellos se tendrá por parte de este Tratado, y tendrá la misma fuerza que si estuviese inserto en él; debiendo convenir amistosamente los dos Gobiernos en el arreglo de cuanto necesiten estos individuos, y en la escolta respectiva que deban llevar, siempre que se crea necesario.

La linea divisoria que se establece por este artículo será religiosamente respetada por cada una de las dos Repúblicas, y ninguna variacion se hará jamás en ella, sino de expreso y libre consentimiento de ambas Naciones, otorgado legalmente por el Gobierno general de cada una de ellas, con arreglo á su propia constitucion.

Artículo VI.

Los buques y ciudadanos de los Estados-Unidos tendrán en todo tiempo un libre y no interrumpido tránsito por el golfo de California y por el rio Colorado desde su confluencia con el Gila, para sus posesiones y desde sus posesiones sitas al norte de la linea divisoria que queda marcada en el artículo precedente; entendiéndose que este tránsito se ha de hacer navegando por el golfo de California y por el rio Colorado, y no por tierra, sin expreso consentimiento del Gobierno mexicano.

Si por reconocimientos que se practiquen se comprobáre la posibilidad y conveniencia de construir un camino, canal ó ferrocarril que en todo ó en parte corra sobre el rio Gila ó sobre alguna de sus márgenes derecha ó izquierda en la latitud de una legua

marina de uno ó de otro lado del rio, los Gobiernos de ambas repúblicas se pondrán de acuerdo sobre su construccion á fin de que sirva igualmente para el uso y provecho de ambos paises.

ARTÍCULO VII.

Como el rio Gila y la parte del rio Bravo del Norte que corre bajo el lindero meridional de Nuevo-México se dividen por mitad entre las dos Repúblicas, segun lo establecido en el artículo quinto, la navegacion en el Gila y en la parte que queda indicada del Bravo será libre y comun á los buques y ciudadanos de ambos paises, sin que por alguno de ellos pueda hacerse (sin consentimiento del otro) ninguna obra que impida ó interrumpa en todo ó en parte el ejercicio de este derecho, ni aun con motivo de favorecer nuevos métodos de navegacion. Tampoco se podrá cobrar (sino en el caso de desembarco en alguna de sus riberas) ningun impuesto ó contribucion bajo ninguna denominacion ó título á los buques, efectos, mercancias ó personas que naveguen en dichos rios. Si para hacerlos ó mantenerlos navegables, fuere necesario ó conveniente establecer alguna contribucion ó impuesto, no podrá esto hacerse sin el consentimiento de los dos Gobiernos.

Las estipulaciones contenidas en el presente artículo dejan ilesos los derechos territoriales de una y otra República dentro de los límites que les quedan marcados.

ARTÍCULO VIII.

Los mexicanos establecidos hoy en territorios pertenecientes antes á México y que quedan para lo futuro dentro de los límites señalados por el presente Tratado á los Estados-Unidos, podrán permanecer en donde ahora habitan, ó trasladarse en cualquier tiempo á la República mexicana, conservando en los indicados territorios los bienes que poseen, ó enagenándolos y pasando su valor á donde les convenga, sin que por esto pueda exigirseles ningun género de contribucion, gravámen ó impuesto.

Los que prefieran permanecer en los indicados territorios, podrán conservar el título y derechos de ciudadanos mexicanos, ó adquirir el título y derechos de ciudadanos de los Estados-Unidos. Mas la eleccion entre una y otra ciudadanía deberán hacerla dentro de un año contado desde la fecha del cange de las ratificaciones de este Tratado. Y los que permanecieren en los indicados territorios despues de transcurrido el año, sin haber declarado su intencion de retener el carácter de mexicanos, se considerará que han elegido ser ciudadanos de los Estados-Unidos.

Las propiedades de todo género existentes en los expresados territorios, y que pertenecen ahora á mexicanos no establecidos en ellos, serán respetadas inviolablemente. Sus actuales dueños, los herederos de estos, y los mexicanos que en lo venidero puedan adquirir por contrato las indicadas propiedades, disfrutarán respecto de ellas tan amplia garantia, como si perteneciesen á ciudadanos de los Estados-Unidos.

ARTÍCULO IX.

Los mexicanos, que en los territorios antedichos, no conserven el carácter de ciudadanos de la República Mexicana, segun lo estipulado en el artículo precedente, serán incorporados en la Union de los Estados Unidos, y se admitirán en tiempo oportuno (á juicio del Congreso de los Estados Unidos) al goce de todos los derechos de ciudadanos de los Estados Unidos conforme á los principios de la Constitucion; y entretanto serán mantenidos y protejidos en el goce de su libertad y propiedad, y asegurados en el libre ejercicio de su religion sin restriccion alguna.

ARTÍCULO X.

[Suprimido.]

ARTÍCULO XI.

En atencion á que una gran parte de los territorios que por el presente Tratado van á quedar para lo futuro dentro de los límites de los Estados-Unidos, se halla actualmente ocupada por tríbus salvages, que han de estar en adelante bajo la exclusiva autoridad del Gobierno de los Estados-Unidos, y cuyas incursiones sobre los distritos mexicanos serian en extremo perjudiciales; está solemnemente convenido que el mismo Gobierno de los Estados-Unidos contendrá las indicadas incursiones por medio de la fuerza siempre que así sea necesario; y cuando no pudiére prevenirlas, castigará y escarmentará á los invasores, exigiendoles ademas la debida reparacion: todo del mismo modo y con la misma diligencia y energia con que obraria, si las incursiones se hubiesen meditado ó ejecutado sobre territorios suyos ó contra sus propios ciudadanos.

A ningun habitante de los Estados-Unidos será lícito, bajo ningun pretesto, comprar ó adquirir cautivo alguno, mexicano ó extrangero residente en México, apresado por los Indios habitantes en territorio de cualquiera de las dos Repúblicas, ni los

caballos, mulas, ganados, ó cualquiera otro género de cosas que hayan robado dentro del territorio mexicano.

Y en caso de que cualquier persona ó personas cautivadas por los Indios dentro del territorio mexicano sean llevadas al territorio de los Estados-Unidos, el Gobierno de dichos Estados-Unidos se compromete y liga de la manera mas solemne, en cuanto le sea posible, á rescatarlas y á restituirlas á su pays, ó entregarlas al agente ó representante del Gobierno mexicano, haciendo todo esto, tan luego como sepa que los dichos cautivos se hallan dentro de su territorio, y empleando al efecto el leal ejercicio de su influencia y poder. Las autoridades mexicanas darán á las de los Estados-Unidos, segun sea practicable, una noticia de tales cautivos; y el agente mexicano pagará los gastos erogados en el mantenimiento y remision de los que se rescaten, los cuales entre tanto serán tratados con la mayor hospitalidad por las autoridades americanas del lugar en que se encuentren. Mas si el Gobierno de los Estados-Unidos antes de recibir aviso de México, tuviere noticia por cualquiera otro conducto de existir en su territorio cautivos mexicanos, procederá desde luego á verificar su rescate y entrega al agente mexicano, segun queda convenido.

Con el objeto de dar á estas estipulaciones la mayor fuerza posible, y afianzar al mismo tiempo la seguridad y las reparaciones que exige el verdadero espíritu é intencion con que se han ajustado, el Gobierno de los Estados-Unidos dictará sin inútiles dilaciones, ahora y en lo de adelante, las leyes que requiera la naturaleza del asunto, y vigilará siempre sobre su ejecucion. Finalmente el Gobierno de los mismos Estados-Unidos tendrá muy presente la santidad de esta obligacion siempre que tenga que desalojar á los indios de cualquier punto de los indicados territorios, ó que establecer en él á ciudadanos suyos; y cuidará muy especialmente de que no se ponga á los indios que habitaban antes aquel punto, en necesidad de buscar nuevos hogares por medio de las incursiones sobre los distritos mexicanos, que el Gobierno de los Estados-Unidos se ha comprometido solemnemente á reprimir.

ARTÍCULO XII.

En consideracion á la estension que adquieren los límites de los Estados-Unidos, segun quedan descritos en el artículo quinto del presente tratado, el Gobierno de los mismos Estados-Unidos se compromete á pagar al de la República mexicana la suma de quince millones de pesos.

Inmediatamente despues que este tratado haya sido ratificado por el gobierno de la República mexicana, se entregará al mismo Gobierno por él de los Estados-Unidos, en la ciudad de México, y en moneda de plata ú oro del cuño mexicano, la suma de tres millones de pesos. Los doce millones de pesos restantes se pagarán en México, en moneda de plata ú oro del cuño mexicano, en abonos de tres millones de pesos cada año, con un rédito de seis por ciento anual: este rédito comienza á correr para toda la suma de los doce millones el dia de la ratificacion del presente tratado por el Gobierno mexicano, y con cada abono anual de capital se pagará el rédito que corresponda á la suma abonada. Los plazos para los abonos de capital corren desde el mismo dia que empiezan á causarse los réditos.

ARTÍCULO XIII.

Se obliga ademas el Gobierno de los Estados-Unidos á tomar sobre sí y satisfacer cumplidamente á los reclamantes, todas las cantidades que hasta aquí se les deben y cuantas se venzan en adelante por razon de las reclamaciones ya liquidadas y sentenciadas contra la República mexicana conforme á los convenios ajustados entre ambas Repúblicas el once de Abril de mil ochocientos treinta y nueve, y el treinta de Enero de mil ochocientos cuarenta y tres; de manera que la República mexicana nada absolutamente tendrá que lastar en lo venidero, por razon de los indicados reclamos.

ARTÍCULO XIV.

Tambien exoneran los Estados-Unidos á la República mexicana de todas las reclamaciones de ciudadanos de los Estados-Unidos no decididas aun contra el Gobierno mexicano, y que puedan haberse originado antes de la fecha de la firma del presente Tratado. Esta exoneracion es definitiva y perpetua, bien sea que las dichas reclamaciones se admitan, bien sea que se desechen por el Tribunal de Comisarios de que habla el artículo siguiente, y cualquiera que pueda ser el monto total de las que queden admitidas.

ARTÍCULO XV.

Los Estados-Unidos exonerando á México de toda responsabilidad por las reclamaciones de sus ciudadanos mencionadas en el artículo precedente, y considerándolas completamente chanceladas para siempre, sea cual fuere su monto, toman á su cargo satisfacerlas hasta una cantidad que no exceda de tres millones doscientos

cincuenta mil pesos. Para fijar el monto y validez de estas reclamaciones, se establecerá por el Gobierno de los Estados-Unidos un Tribunal de Comisarios cuyos fallos serán definitivos y concluyentes, con tal que al decidir sobre la validez de dichas reclamaciones, el tribunal se haya guiado y gobernado por los principios y reglas de decision establecidos en los artículos primero y quinto de la convencion, no ratificada, que se ajustó en la ciudad de México el veinte de Noviembre de mil ochocientos cuarenta y tres: y en ningun caso se dará fallo en favor de ninguna reclamacion que no esté comprendida en las reglas y principios indicados.

Si en juicio del dicho Tribunal de Comisarios, ó en él de los reclamantes se necesitáre para la justa decision de cualquier reclamacion algunos libros, papeles de archivo ó documentos que posea el Gobierno mexicano, ó que estén en su poder; los Comisarios, ó los reclamantes por conducto de ellos, los pedirán por escrito (dentro del plazo que designe el Congreso) dirigiéndose al Ministro mexicano de Relaciones exteriores, á quien transmitirá las peticiones de esta clase el Secretario de Estado de los Estados-Unidos: y el Gobierno mexicano se compromete á entregar á la mayor brevedad posible despues de recibida cada demanda, los libros, papeles de archivo ó documentos, así especificados, que posea ó estén en su poder, ó copias ó extractos auténticos de los mismos, con el objeto de que sean transmitidos al Secretario de Estado, quien los pasará inmediatamente al expresado Tribunal de Comisarios. Y no se hará peticion alguna de los enunciados libros, papeles ó documentos, por, ó á instancia de ningun reclamante sin que antes se haya aseverado bajo juramento ó con afirmacion solemne la verdad de los hechos que con ellos se pretende probar.

Artículo XVI.

Cada una de las dos Repúblicas se reserva la completa facultad de fortificar todos los puntos que para su seguridad estime convenientes en su propio territorio.

Artículo XVII.

El Tratado de Amistad, Comercio y Navegacion, concluido en la Ciudad de México el cinco de Abril del año del Señor 1831, entre la República mexicana y los Estados-Unidos de América, esceptuándose el artículo adicional y cuanto pueda haber en sus estipulaciones incompatible con alguna de las contenidas en el presente Tratado, queda restablecido por el periodo de ocho años desde el

dia del cange de las ratificaciones del mismo presente Tratado, con igual fuerza y valor que si estuviese inserto en él; debiendo entenderse que cada una de las partes contratantes se reserva el derecho de poner término al dicho tratado de Comercio y Navegacion en cualquier tiempo luego que haya expirado el periodo de los ocho años, comunicando su intencion á la otra parte con un año de anticipacion.

Artículo XVIII.

No se exigirán derechos ni gravámen de ninguna clase á los artículos todos que lleguen para las tropas de los Estados-Unidos á los puertos mexicanos ocupados por ellas, antes de la evacuacion final de los mismos puertos, y despues de la devolucion á México de las Aduanas situadas en ellos. El Gobierno de los Estados-Unidos se compromete á la vez, y sobre esto empeña su fé, á establecer y mantener con vigilancia cuantos guardas sean posibles para asegurar las rentas de México, precaviendo la importacion, á la sombra de esta estipulacion, de cualesquiera artículos que realmente no sean necesarios, ó que excedan en cantidad de los que se necesiten para el uso y consumo de las fuerzas de los Estados-Unidos, mientras ellas permanezcan en México. A este efecto todos los oficiales y agentes de los Estados-Unidos tendrán obligacion de denunciar á las autoridades mexicanas en los mismos puertos cualquier conato de fraudulento abuso de esta estipulacion que pudiéren conocer ó tuviéren motivo de sospechar; así como de impartir á las mismas autoridades todo el auxilio que pudiéren con este objeto. Y cualquier conato de esta clase, que fuére legalmente probado, y declarado por sentencia de tribunal competente, será castigado con el comiso de la cosa que se haya intentado introducir fraudulentamente.

Artículo XIX.

Respecto de los efectos, mercancias y propiedades importados en los puertos mexicanos durante el tiempo que han estado ocupados por las fuerzas de los Estados-Unidos, sea por ciudadanos de cualquiera de las dos Repúblicas, sea por ciudadanos ó súbditos de alguna nacion neutral, se observarán las reglas siguientes.

I. Los dichos efectos, mercancias y propiedades siempre que se hayan importado antes de la devolucion de las Aduanas á las autoridades mejicanas conforme á lo estipulado en el artículo

tercero de este Tratado, quedarán libres de la pena de comiso aun cuando sean de los prohibidos en el arancél mexicano.

II. La misma exencion gozarán los efectos, mercancias y propiedades que lleguen á los puertos mexicanos despues de la devolucion á México de las Aduanas marítimas y antes de que expiren los sesenta dias que van á fijarse en el artículo siguiente para que empieze á regir el arancél mexicano en los puertos; debiendo al tiempo de su importacion sujetarse los tales efectos, mercancias y propiedades, en cuanto al pago de derechos, á lo que en el indicado siguiente artículo se establece.

III. Los efectos mercancias y propiedades designados en las dos reglas anteriores quedarán exentos de todo derecho, alcabála ó impuesto, sea bajo el título de internacion, sea bajo cualquiera otro, mientras permanezcan en los puntos donde se hayan importado, y á su salida para el interior; y en los mismos puntos no podrá jamas exigirse impuesto alguno sobre su venta.

IV. Los efectos, mercancias y propiedades designados en las reglas primera y segunda, que hayan sido internados á cualquier lugar ocupado por fuerzas de los Estados-Unidos, quedarán exentos de todo derecho sobre su venta ó consumo, y de todo impuesto ó contribucion bajo cualquier título ó denominacion, mientras permanezcan en el mismo lugar.

V. Mas si algunos efectos, mercancias ó propiedades de los designados en las reglas primera y segunda se trasladáren á algun lugar no ocupado á la sazon por las fuerzas de los Estados-Unidos; al introducirse á tal lugar, ó al venderse ó consumirse en él, quedarán sujetos á los mismos derechos que bajo las leyes mexicanas deberian pagar en tales casos si se hubiéran importado en tiempo de paz por las Aduanas marítimas, y hubiesen pagado en ellas los derechos que establece el arancél mexicano.

VI. Los dueños de efectos, mercancias y propiedades designados en las reglas primera y segunda, y existentes en algun puerto de México, tienen derecho de reembarcarlos, sin que pueda exigírseles ninguna clase de impuesto, alcabala ó contribucion.

Respecto de los metales y de toda otra propiedad exportados por cualquier puerto mexicano durante su ocupacion por las fuerzas Americanas y antes de la devolucion de su Aduana al Gobierno mexicano, no se exigirá á ninguna persona por las autoridades de México, ya dependan del Gobierno general, ya de algun Estado, que pague ningun impuesto, alcabála ó derecho por la indicada exportacion, ni sobre ella podrá exigírsele por las dichas autoridades cuenta alguna.

ARTÍCULO XX.

Por consideracion á los intereses del comercio de todas las naciones queda convenido que si pasáren menos de sesenta dias desde la fecha de la firma de este Tratado hasta que se haga la devolucion de las Aduanas marítimas, segun lo estipulado en el artículo tercero; todos los efectos, mercancias y propiedades que lleguen á los puertos mexicanos desde el dia en que se verifique la devolucion de las dichas Aduanas hasta que se completen sesenta dias contados desde la fecha de la firma del presente Tratado, se admitirán no pagando otros derechos que los establecidos en la tarifa que esté vigente en las expresadas Aduanas al tiempo de su devolucion; y se extenderán á dichos efectos, mercancias y propiedades las mismas reglas establecidas en el artículo anterior.

ARTÍCULO XXI.

Si desgraciadamente en el tiempo futuro se suscitáre algun punto de desacuerdo entre los Gobiernos de las dos Repúblicas, bien sea sobre la inteligencia de alguna estipulacion de este Tratado, bien sobre cualquiera otra materia de las relaciones políticas ó comerciales de las dos Naciones, los mismos Gobiernos á nombre de ellas se comprometen á procurar de la manera mas sincera y empeñosa á llanar las diferencias que se presenten y conservar el estado de paz y amistad en que ahora se ponen los dos payses, usando al efecto de representaciones mútuas y de negociaciones pacíficas. Y si por estos medios no se lográre todava ponerse de acuerdo, no por eso se apelará á represalia, agresion ni hostilidad de ningun género de una República contra otra hasta que el Gobierno de la que se crea agraviada, haya considerado maduramente y en espíritu de paz y buena vecindad si no seria mejor que la diferencia se terminára por un arbitramento de Comisarios nombrados por ambas partes, ó de una nacion amiga. Y si tal medio fuere propuesto por cualquiera de las dos partes, la otra accederá á él, á no ser que lo juzgue incompatible con la naturaleza y circunstancias del caso.

ARTÍCULO XXII.

Si (lo que no es de esperarse, y Dios no permita) desgraciadamente se suscitáre guerra entre las dos Repúblicas, estas para el caso de tal calamidad se comprometen ahora solemnemente, ante sí mismas y ante el mundo, á observar las reglas siguientes de una manera absoluta, si la naturaleza del objeto á que se contraen, lo

permite; y tan extrictamente como sea dable, en todos los casos en que la absoluta observancia de ellas fuére imposible.

I. Los comerciantes de cada una de las dos Repúblicas que á la sazon residan en territorio de la otra, podrán permanecer doce meses los que residan en el interior, y seis meses los que residan en los puertos, para recoger sus deudas y arreglar sus negocios; durante estos plazos disfrutarán la misma proteccion, y estarán sobre el mismo pié en todos respectos, que los ciudadanos ó súbditos de las naciones mas amigas; y al expirar el término, ó antes de él, tendrán completa libertad para salir y llevar todos sus efectos sin molestia ó embarazo, sujetándose en este particular á las mismas leyes á qué estén sujetos y deban arreglarse los ciudadanos ó súbditos de las naciones mas amigas. Cuando los ejércitos de una de las dos Naciones entren en territorios de la otra, las mujeres y niños, los eclesiásticos, los estudiantes de cualquier facultad, los labradores, comerciantes, manufactureros y pescadores que estén desarmados y residan en ciudades, pueblos ó lugares no fortificados, y en general todas las personas cuya ocupacion sirva para la comun subsistencia y beneficio del género humano, podrán continuar en sus ejercicios, sin que sus personas sean molestadas. No serán incendiadas sus casas ó bienes, ó destruidos de otra manera; ni serán tomados sus ganados, ni devastados sus campos por la fuerza armada en cuyo poder puedan venir á caer por los acontecimientos de la guerra; pero si hubiére necesidad de tomarles alguna cosa para el uso de la misma fuerza armada, se les pagará lo tomado á un precio justo. Todas las iglesias, hospitales, escuelas, colegios, librerias, y demas establecimientos de caridad y beneficencia serán respetados; y todas las personas que dependan de los mismos, serán protegidas en el desempeño de sus deberes y en la continuacion de sus profesiones.

II. Para aliviar la suerte de los prisioneros de guerra, se evitarán cuidadosamente las prácticas de enviarlos á distritos distantes, inclementes ó malsanos, ó de aglomerarlos en lugares estrechos y enfermizos. No se confinarán en calabozos, prisiones ni pontones; no se les aherrojará, ni se les atará, ni se les impedirá de ningun otro modo el uso de sus miembros. Los oficiales que darán en libertad bajo su palabra de honor, dentro de distritos convenientes, y tendrán alojamientos cómodos; y los soldados rasos se colocarán en acantonamientos bastante despejados y extensos para la ventilacion y el ejercicio, y se alojarán en cuarteles tan amplios y cómodos como los que use para sus propias tropas la parte que los tenga

en su poder. Pero si algun oficial faltáre á su palabra, saliendo del distrito que se le ha señalado; ó algun otro prisionero se fugáre de los límites de su acantonamiento despues que estos se le hayan fijado, tal oficial ó prisionero perderá el beneficio del presente artículo por lo que mira á su libertad bajo su palabra ó en acantonamiento. Y si algun oficial faltando así á su palabra, ó algun soldado raso saliendo de los límites que se le han asignado, fuére encontrado despues con las armas en la mano, antes de ser debidamente cangeado, tal persona en esta actitud ofensiva será tratada conforme á las leyes comunes de la guerra. A los oficiales se proveerá diariamente por la parte en cuyo poder estén, de tantas raciones compuestas de los mismos artículos como las que gozan en especie ó en equivalente los oficiales de la misma graduacion en su propio ejército: á todos los demas prisioneros se proveerá diariamente de una racion semejante á la que se ministra al soldado raso en su propio servicio: el valor de todas estas suministraciones se pagará por la otra parte al concluirse la guerra, ó en los periodos que se convengan entre sus respectivos comandantes, precediendo una mútua liquidacion de las cuentas que se lleven del mantenimiento de prisioneros: y tales cuentas no se mezclarán ni compensarán con otras; ni el saldo que resulte de ellas se reusará bajo pretesto de compensacion ó represalia por cualquiera causa real ó figurada. Cada una de las partes podrá mantener un comisario de prisioneros nombrado por ella misma en cada acantonamiento de los prisioneros que estén en poder de la otra parte: este comisario visitará á los prisioneros siempre que quiera; tendrá facultad de recibir, libres de todo derecho ó impuesto, y de distribuir todos los auxilios que pueden enviarles sus amigos; y podrá libremente transmitir sus partes en cartas abiertas á la autoridad por la cual está empleado.

Y se declara que ni el pretesto de que la guerra destruye los tratados, ni otro alguno, sea el que fuére, se considerará que anula ó suspende el pacto solemne contenido en este artículo. Por el contrario el estado de guerra es cabalmente el que se ha tenido presente al ajustarlo, y durante el cual sus estipulaciones se han de observar tan santamente como las obligaciones mas reconocidas de la ley natural ó de gentes.

ARTÍCULO XXIII.

Este Tratado será ratificado por el Presidente de la República mexicana, previa la aprobacion de su Congreso general; y por el Presidente de los Estados-Unidos de América con el consejo y consentimiento del Senado: y las ratificaciones se cangearán en la

ciudad de Washington, ó donde estuviere el gobierno Mexicano, á los cuatro meses de la fecha de la firma del mismo Tratado, ó antes si fuére posible.

En fé de lo cual, nosotros los respectivos Plenipotenciarios hemos firmado y sellado por quintuplicado este Tratado de Paz, Amistad, Límites y Arreglo definitivo, en la Ciudad de Guadalupe Hidalgo el dia dos de Febrero del año de nuestro Señor mil ochocientos cuarenta y ocho.

BERNARDO COUTO. [L. S.]
MIG^{L}. ATRISTAIN. [L. S.]
LUIS G. CUEVAS. [L. S.]
N. P. TRIST. [L. S.]

[Spanish Text]

[ARTICLES REFERRED TO IN THE FIFTEENTH ARTICLE OF THE PRECEDING TREATY.]

ARTÍCULO I.

Todas las reclamaciones de Ciudadanos de la República Mexicana contra el Gobierno de los Estados Unidos, que se presentaren del modo y en el tiempo que en adelante se espresa; y todas las reclamaciones de Ciudadanos de los Estados Unidos contra el Gobierno de la República Mexicana, que por cualquier motivo no se presentáron á la Junta ó que no fueron examinadas ó decididas finalmente por ella ó por el arbitro establecido por la convencion de 1839, y que se presentáren del modo y en el tiempo que en adelante se espresará, se someterán á cuatro comisionados que formarán Junta, y serán nombrados del modo siguiente, á saber: Dos comisionados serán nombrados por el Presidente de la República Mexicana, y los otros dos lo serán por el Presidente de los Estados Unidos, con consentimiento y aprobacion del Senado de los mismos. Los dichos comisionados de ese modo nombrados, prestarán juramento en presencia unos de otros, de examinar y decidir imparcialmente las reclamaciones que se les sometan, y que legalmente deban considerarse segun las pruebas que se les presentaren y segun los principios de derecho y justicia de la Ley de las Naciones y de los tratados entre ambas Repúblicas.

ARTÍCULO V.

Todas las reclamaciones de Ciudadanos de los Estados Unidos contra el Gobierno de la República Mexicana, que fueron examinadas por los comisionados y sometidas al Arbitro nombrado con

arreglo á la convención de 11. de Abril de 1839, y que no fueron por el decididas, se someterán y decidirán por el Arbitro que debe nombrarse conforme á esta convencion por lo relativo á los puntos que se sujetaron al Arbitro establecido por la anterior convencion; y su decision será final y definitiva. A la vez se ha convenido que si se juzga oportuno por los comisionados respectivos, podrán someterse por ellos al espresado Arbitro, nuevas esposiciones sobre dichas reclamaciones.

[1853.]

[TREATY OF BOUNDARY, CESSION OF TERRITORY, TRANSIT OF ISTHMUS OF TEHUANTEPEC, ETC.[a]]

[Gadsden Treaty]

In the name of Almighty God

The Republic of Mexico and the United States of America desiring to remove every cause of disagreement, which might interfere in any manner with the better friendship and intercourse between the two Countries; and especially, in respect to the true limits which should be established, when notwithstanding what was covenanted in the Treaty of Guadalupe Hidalgo in the Year 1848, opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid these, and to strengthen and more firmly maintain the peace, which happily prevails between the two Republics, the President of the United States has for this purpose, appointed James Gadsden, Envoy Extraordinary and Minister Plenipotentiary of the same near the Mexican Government, and the President of Mexico has appointed as Plenipotentiary "*ad hoc*" His Excellency Don Manuel Diez de Bonilla, Cavalier Grand Cross of the National and Distinguished Order of Guadalupe, and Secretary of State and of the Office of Foreign Relations, and Don Jose Salazar Ylarregui and General Mariano Monterde as Scientific Commissioners invested with Full Powers for this Negotiation, who having communicated their respective Full Powers, and finding them in due and proper form, have agreed upon the articles following

[a] [Signed at Mexico City December 30, 1853; ratification advised by the Senate of the United States with amendments April 25, 1854; ratified by the President of the United States June 29, 1854; ratifications exchanged at Washington June 30, 1854; proclaimed June 30, 1854.]

ARTICLE I[st]

The Mexican Republic agrees to designate the following as her true limits with the United States for the future, Retaining the same dividing line between the two California's, as already defined and established according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same, thence due west one hundred miles, thence south to the parallel of 31° 20′ north latitude, thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich, thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the Treaty, each of the two Governments shall nominate one Commissioner to the end that, by common consent, the two thus nominated having met in the City of Paso del Norte, three months after the exchange of the ratifications of this Treaty may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the Mixed Commission according to the Treaty of Guadalupe keeping a Journal and making proper plans of their operations. For this purpose if they should Judge it it necessary, the contracting Parties shall be at liberty each to unite to its respective Commissioner, Scientific or other assistants, such as Astronomers and Surveyors whose concurrence shall not be considered necessary for the settlement and ratification of a true line of division between the two Republics; that line shall be alone established upon which the Commissioners may fix, their consent in this particular being considered decisive and an integral part of this Treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the Parties contracting

The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conform-

ity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively

In consequence, the stipulation in the 5th Article of the Treaty of Guadalupe upon the Boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same

ARTICLE II

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo, and the said article and the thirty third article of the treaty of amity, commerce, and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831, are hereby abrogated.

ARTICLE III

In consideration of the foregoing stipulations, the government of the United States agrees to pay to the government of Mexico, in the City of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established

ARTICLE IV.

The Provisions of the 7th and 8th Articles of the Treaty of Guadalupe Hidalgo having been rendered nugatory for the most part by the cession of Territory granted in the First Article of this Treaty the said Articles are hereby abrogated and annulled and the provisions as herein expressed substituted therefor. The Vessels and Citizens of the United States shall in all Time have free and uninterrupted passage through the Gulf of California to and from their possessions situated North of the Boundary line of the two Countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government, and precisely the same provisions, stipulations and restrictions in all respects are hereby agreed upon and adopted and shall

be scrupulously observed and enforced by the Two Contracting Governments in reference to the Rio Colorado, so far and for such distance as the middle of that River is made their common Boundary Line by the First article of this Treaty

The several Provisions, Stipulations and restrictions contained in the 7th article of the Treaty of Guadalupe Hidalgo, shall remain in force only so far as regards the Rio Bravo del Norte below the initial of the said Boundary provided in the First article of this Treaty That is to say below the intersection of the 31° 47′ 30″ parallel of Latitude with the Boundary Line established by the late Treaty dividing said river from its mouth upwards according to the 5th article of the Treaty of Guadalupe.

ARTICLE V.

All the provisions of the Eighth and Ninth, Sixteenth and Seventeenth Articles of the Treaty of Guadalupe Hidalgo shall apply to the Territory ceded by the Mexican Republic in the First Article of the present Treaty and to all the rights of persons and property both civil and ecclesiastical within the same, as fully and as effectually as if the Said Articles were herein again recited and set forth

ARTICLE VI.

No Grants of Land within the Territory ceded by the First Article of this Treaty bearing date subsequent to the day Twenty fifth of September—when the Minister and Subscriber to this Treaty on the part of the United States proposed to the government of Mexico to terminate the question of Boundary, will be considered valid or be recognised by the United States, or will any Grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the Archives of Mexico

ARTICLE VII.

Should there at any future period (which God forbid) occur any disagreements between the two Nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference, and should they still in this manner not succeed, never will they proceed to a declaration of War, without having previously paid attention to what has been set forth in Article 21 of the Treaty of Guadalupe for similar cases; which article as well as the 22d, is here reaffirmed

ARTICLE VIII.

The Mexican government having on the 5th of February 1853 authorized the early construction of a plank and rail road across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States by its Agents shall have the right to transport across the Isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the Isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the Isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE IX.

This Treaty shall be ratified, and the respective ratifications shall be exchanged at the City of Washington, within the exact period of six months from the date of its signature or sooner if possible

In testimony whereof, We, the Plenipotentiaries of the contracting parties have hereunto affixed our hands and seals at Mexico the Thirtieth (30th) day of December in the Year of Our Lord one thousand eight hundred and fifty three, in the thirty third year of the Independence of the Mexican Republic, and the seventy eighth of that of the United States

JAMES GADSDEN [L. S.]
MANUEL DIEZ DE BONILLA [L. S.]
JOSÉ SALAZAR YLARREGUI [L. S.]
J. MARIANO MONTERDE [L. S.]

[Spanish Text.]

[GADSDEN TREATY]

[1853.]

En el nombre de Dios Todopoderoso.

La República de México y los Estados Unidos de América, deseando remover toda causa de desacuerdo que pudiera influir en algun modo en contra de la mejor amistad y correspondencia entre ambos Paises, y especialmente por lo respectivo á los verdaderos límites que deben fijarse, cuando no obstante lo pactado en el Tratado de Guadalupe Hidalgo en el año 1848, aún se hán suscitado algunas interpretaciones encontradas que pudieran ser ocasion de cuestiones de grave trascendencia; para evitarlas, y afirmar y corroborar mas la paz que felizmente reyna entre ambas Repúblicas, el Presidente de México há nombrado á este fin con el carácter de plenipotenciario *ad hoc* al Exmo. Sr. D. Manuel Diez de Bonilla, Caballero Gran Cruz de la Nacional y Distinguida Orden de Guadalupe, y Secretario de Estado y del Despacho de Relaciones Exteriores, y á los Señores D. José Salazar Ylarregui y General D. Mariano Monterde, como Comisarios Peritos investidos con Plenos Poderes para esta negociacion; y el Presidente de los Estados Unidos, á S. E. el Sr. Santiago Gadsden, Enviado Extraordinario y Ministro Plenipotenciario de los mismos Estados Unidos cerca del Gobierno Mexicano; quienes habiendose comunicado sus respectivos Plenos Poderes, y halládolos en buena y debida forma, hán convenido en los artículos siguientes:

ARTÍCULO 1°.

La República Mexicana conviene en señalar para lo sucesivo como verdaderos límites con los Estados Unidos, los siguientes: Subsistiendo la misma línea divisoria entre las dos Californias, tal

cual está ya definida y marcada conforme al artículo quinto del Tratado de Guadalupe Hidalgo, los límites entre las dos Repúblicas serán los que siguen. Comenzando en el Golfo de Méjico á tres leguas de distancia de la costa, frente á la desembocadura del Rio grande, como se estipuló en el artículo quinto del Tratado de Guadalupe Hidalgo: de allí, segun se fija en dicho artículo, hasta la mitad de aquel Rio al punto donde la paralela de 31° 47′ de latitud Norte atraviesa el mismo Rio: de allí, cien millas en línea recta al oeste: de allí al Sur á la paralela de 31° 20′ de latitud norte: de allí siguiendo dicha paralela de 31° 20′, hasta el 111 del meridiano de longitud oeste de Greenwich: de allí, en línea recta á un punto en el Rio Colorado, veinte millas inglesas abajo de la union de los Rios Gila y Colorado, de allí, por la mitad del dicho Rio Colorado, Rio arriba, hasta donde encuentra la actual línea divisoria entre los Estados Unidos y Méjico. Para la egecucion de esta parte del Tratado, cada uno de los dos Gobiernos nombrará un Comisario, á fin de que por comun acuerdo, los dos así nombrados, que se reunirán en la Ciudad del Paso del Norte, tres meses despues del cange de las ratificaciones de este Tratado, procedan á recorrer y demarcar sobre el terreno la linea divisoria estipulada por este artículo, en lo que no estuviere ya reconocida y establecida por la Comision Mixta segun el Tratado de Guadalupe; llevando al efecto Diarios de sus procedimientos, y levantando los planos convenientes. A este efecto, si lo juzgaren necesario las Partes contratantes, podrán añadir á su respectivo Comisario, alguno ó algunos auxiliares, bien facultativos ó no, como Agrimensores, Astrónomos, &c.; pero sin que por esto su concurrencia se considere necesaria para la fijacion y ratificacion como verdadera línea divisoria entre ambas Repúblicas; pues dicha línea solo será establecida por lo que convengan los Comisarios, reputandose su conformidad en este punto, como decisiva, y parte integrante de este Tratado, sin necesidad de ulterior ratificacion ó aprobacion, y sin lugar á interpretacion de ningun género por cualquiera de las dos Partes contratantes.

La línea divisoria establecida de este modo, será en todo tiempo fielmente respetada por los dos Gobiernos, sin permitirse ninguna variacion en ella, sino es de espreso y libre consentimiento de los dos, otorgado de conformidad con los principios del Derecho de gentes, y con arreglo á la Constitucion de cada Pais respectivamente. En consecuencia, lo estipulado en el artículo quinto del Tratado de Guadalupe sobre la línea divisoria en él descrita, queda

sin valor en lo que repugne con la establecida aquí; dandose por lo mismo por derogada y anulada dicha línea en la parte en que no es conforme con la presente, así como permanecerá en todo su vigor en la parte en que tuviere dicha conformidad con ella.

ARTÍCULO II.

El Gobierno de México por este artículo exime al de los Estados Unidos de las obligaciones del articulo once del Tratado de Guadalupe Hidalgo, y dicho artículo y el treinta y tres, del Tratado de Amistad, Comercio y Navegacion entre los Estados Unidos Mexicanos y los Estados Unidos de América, concluido en México el dia cinco de Abril de mil ochocientos trienta y uno quedan por este derogados.

ARTÍCULO III.

En consideracion á las anteriores estipulaciones, el Gobierno de los Estados Unidos, conviene en pagar al Gobierno de México en la Ciudad de Nueva York, la suma de diez millones de pesos, de los cuales, siete millones se pagarán luego que se verifique el cange de las ratificaciones de este Tratado, y los tres millones restantes tan pronto como se reconozca, marque y fije la línea divisoria.

ARTÍCULO IV.

Habiendose hecho en su mayor parte nugatorias las estipulaciones de los artículos sexto y séptimo del Tratado de Guadalupe Hidalgo por la cesion de territorio hecha en el artículo 1° de este Tratado, aquellos dichos artículos quedan por este derogados y anulados, y las estipulaciones que á continuacion se espresan, substituidas en lugar de aquellas. Los buques y Ciudadanos de los Estados Unidos tendrán en todo tiempo libre y no interrumpido tránsito por el Golfo de California para sus posesiones, y desde sus posesiones sitas al Norte de la línea divisoria de los dos Paises; entendiendose que ese tránsito se há de hacer navegando por el Golfo de California y por el Rio Colorado, y no por tierra, sin espreso consentimiento del Gobierno Mexicano. Y precisamente, y bajo todos respectos, las mismas disposiciones, estipulaciones y restricciones quedan convenidas y adoptadas por este artículo, y serán escrupulosamente observadas y hechas efectivas por los dos Gobiernos contratantes, con referencia al Rio Colorado por tal distancia, y en tanto que la medianía de ese Rio queda como su línea divisoria comun por el artículo 1° de este

Tratado. Las diversas disposiciones, estipulaciones y restricciones contenidas en el artículo séptimo del Tratado de Guadalupe Hidalgo, solo permanecerán en vigor en lo relativo al Rio Bravo del Norte, abajo del punto inicial de dicho límite estipulado en el artículo 1° de este Tratado; es decir, abajo de la interseccion del paralelo de 31° 47′ 30″ de latitud con la línea divisoria establecida por el reciente Tratado que divide dicho rio desde su embocadura arriba de conformidad con el artículo quinto del Tratado de Guadalupe.

ARTÍCULO V.

Todas las estipulaciones de los artículos octavo, noveno, décimo-sexto y décimo-sétimo del Tratado de Guadalupe Hidalgo, se aplicarán al territorio cedido por la República Mexicana en el artículo 1° del presente Tratado, y á todos los derechos de persona y bienes, tanto civiles como eclesiásticos, que se encuentren dentro de dicho territorio, tan plena y tan eficazmente como si dichos artículos de nuevo se insertáran é incluyéran á la letra en este.

ARTÍCULO VI.

No se considerarán válidas ni se reconocerán por los Estados Unidos ningunas concesiones de tierras en el territorio cedido por el artículo 1° de este Tratado, de fecha subsecuente al dia veinte y cinco de Septiembre en que el Ministro y Signatario de este Tratado por parte de los Estados Unidos propuso al Gobierno de México dirimir la cuestion de límites; ni tampoco se respetarán ni considerarán como obligatorias ningunas concesiones hechas con anterioridad, que no hayan sido inscritas y debidamente registradas en los archivos de México.

ARTÍCULO VII.

Si en lo futuro, (que Dios no permita,) se suscitare algun desacuerdo entre las dos Naciones, que pudiera llevarlas á un rompimiento en sus relaciones y paz recíproca, se comprometen así mismo á procurar por todos los medios posibles el allanamiento de cualquiera diferencia; y si aún de esta manera no se consiguiere, jamás se llegará á una declaracion de guerra sin haber observado préviamente cuanto en el artículo veintiuno del Tratado de Guadalupe quedó establecido para semejantes casos, y cuyo artículo se dá por reafirmado en este Tratado, así como el veintidos.

ARTÍCULO VIII.

Habiendo autorizado el Gobierno Mexicano en cinco de Febrero de mil ochocientos, cincuenta y tres, la pronta construccion de un camino de madera y de un ferro-carril en el Istmo de Tehuantepec, para asegurar de una manera estable los beneficios de dicha via de comunicacion á las personas y mercancias de los Ciudadanos de México y de los Estados Unidos, se estipula que ninguno de los dos Gobiernos pondrá obstaáulo alguno al transito de personas y mercancias de ambas Naciones y que en ningun tiempo se impondrán cargas por el transito de personas y propiedades de Ciudadanos de los Estados Unidos, mayores que las que se impongan á las personas y propiedades de otras Naciones extrangeras, ni ningun interes en dicha via de comunicacion ó en sus productos, se transferirá á un Gobierno extrangero.

Los Estados Unidos tendrán derecho de transportar por el Istmo por medio de sus agentes y en balijas cerradas las malas de los Estados Unidos que no han de distribuirse en la extension de la línea de comunicacion y tambien los efectos del Gobierno de los Estados Unidos, y sus Ciudadanos que solo vayan de transito y no para distribuirse en el Istmo estarán libres de los derechos de aduana ú otros, impuestos por el Gobierno mexicano. No se exigirá á las personas que atraviesen el Istmo, y no permanezcan en el pais, pasaportes ni cartas de seguridad.

Cuando se concluya la construccion del ferro-carril, el Gobierno Mexicano conviene en abrir un puerto de entrada, ademas del de Veracruz, en donde termina dicho ferro-carril en el Golfo de México ó cerca de ese punto.

Los dos Gobiernos celebrarán un arreglo para el pronto transito de tropas y municiones de los Estados Unidos, que este Gobierno tenga ocacion de enviar de una parte de su territorio á otra, situadas en lados opuestos del continente.

Habiendo convenido el Gobierno Mexicano en proteger con todo su poder la construccion, conservacion y seguridad de la obra los Estados Unidos de su parte podrán impartirle su proteccion siempre que fuere apoyado y arreglado al derecho de gentes.

ARTÍCULO IX.

Este Tratado será ratificado, y las ratificaciones cangeadas en la Ciudad de Washington, en el preciso término de seis meses ó ántes si fuere posible, contado ese término desde su fecha.

En fé de lo cual, Nosotros los Plenipotenciarios de las Partes Contratantes lo hemos firmado y sellado en México el dia treinta de Diciembre del año de Nuestro Señor, mil ochocientos cincuenta y tres, trigésimo tercero de la Independencia de la República Mexicana, y septuagésimo octavo de la de los Estados Unidos.

MANUEL DIEZ DE BONILLA [L. S.]
J. MARIANO MONTERDE [L. S.]
JOSÉ SALAZAR YLARREGUI [L. S.]
JAMES GADSDEN [L. S.]

[1882.]

[BOUNDARY CONVENTION.[a]]

The President of the United States of America on the one hand and the President of the United States of Mexico on the other, being desirous of putting an end to whatever difficulties arise from the destruction or displacement of some of the monuments erected for the purpose of marking the boundary between the two countries, have thought proper to conclude a convention with the object of defining the manner in which the said monuments are to be restored to their proper places and new ones erected, if necessary; to which end they have appointed as their Plenipotentiaries, to wit:

The President of the United States of America, Frederick T. Frelinghuysen, Esquire, Secretary of State of the United States of America; and the President of the United States of Mexico, Señor Don Matias Romero, Envoy Extraordinary and Minister Plenipotentiary of the United States of Mexico, in Washington;

Who, after reciprocal exhibition of their full powers, found in good and due form, have agreed upon the following articles:

---

[a] [Signed at Washington July 29, 1882; ratification advised by the Senate of the United States August 8, 1882; ratified by the President of the United States January 29, 1883; ratifications exchanged at Washington March 3, 1883; proclaimed March 5, 1883. The time fixed in Article 8 of this convention for the completion of the work of resurveying and relocating the boundary line was extended for 18 months from July 29, 1882, by an additional article, signed at the City of Washington, December 5, 1885. (Treaties, Conventions, etc., between the United States and other Powers 1776–1909, page 1163, [hereafter cited as Treaties]). The convention, which had lapsed January 3, 1889, was revived and the time fixed by Article 8 further extended for a period of 5 years from October 12, 1889, by a convention signed at the City of Washington February 18, 1889. (Treaties, page 1165). A further extension of 2 years from October 11, 1894, was stipulated by a convention signed at Washington, August 24, 1894. (Treaties, page 1174). With the exception of Article 9, this Treaty has now been fully executed.]

ARTICLE I.

With the object of ascertaining the present condition of the monuments marking the boundary line between the United States of America and the United States of Mexico, established by the treaties of February 2nd, 1848, and December 3rd, 1853, and for determining generally what monuments, if any, have been destroyed or removed and may require to be rebuilt or replaced, a preliminary reconnaissance of the frontier line shall be made by each government, within six months from the exchange of ratifications of this convention. These reconnaissances shall be made by parties under the control of officers of the regular army of the respective countries, and shall be effected in concert, in such manner as shall be agreed upon by the commanders of the respective parties. The expense of each reconnoitering party shall be borne by the government in whose behalf it operates.

These reconnaissance parties shall report to their respective governments, within eight months from the exchange of the ratifications of this convention:

(*a*) the condition of the present boundary monuments;

(*b*) the number of destroyed or displaced monuments;

(*c*) the places, settled or capable of eventual settlement, where it may be advisable to set the monuments closer together along the line than at present;

(*d*) the character of the new monuments required, whether of stone or iron; and their number, approximately, in each case.

ARTICLE II.

Pending the conclusion of the preliminary reconnaissances provided in Article I, each government shall appoint a surveying party, consisting of an Engineer-in-chief, two Associates, one of whom shall be a practical astronomer, and such number of assistant engineers and associates as it may deem proper. The two parties so appointed shall meet at El Paso del Norte, or at any other convenient place to be agreed upon, within six months from the exchange of the ratifications hereof, and shall form, when combined, an "International Boundary Commission."

ARTICLE III.

The International Boundary Commission shall be required and have the power and authority to set in their proper places along the boundary line between the United States and Mexico, from

the Pacific Ocean to the Rio Grande, the monuments heretofore placed there under existing treaties whenever such monuments shall have become displaced; to erect new monuments on the site of former monuments when these shall have been destroyed; and to set new monuments at such points as may be necessary, and be chosen by joint accord between the two Commissioner Engineers-in-Chief. In rebuilding and replacing the old monuments and in providing for new ones, the respective reports of the reconnaissance parties, provided by Article I, may be consulted; provided, however, that the distance between two consecutive monuments shall never exceed eight thousand metres, and that this limit may be reduced on those parts of the line which are inhabited or capable of habitation.

ARTICLE IV.

Where stone shall be found in sufficient abundance, the monuments may be of stone; and in other localities shall be of iron, in the form of a simple tapering four-sided shaft with pediment, rising above the ground to a height of six feet, and bearing suitable inscriptions on its sides. These monuments shall be at least two centimeters in thickness, and weigh not less than five hundred pounds each.

The approximate number thereof to be required may be determined from the reports of the preliminary reconnaissance-parties, and the monuments, properly cast and finished, may be sent forward from time to time to such spots as the commission may select, to be set in place at the sites determined upon as the work progresses.

ARTICLE V.

The Engineers-in-Chief of both sections shall determine, by common consent, what scientific processes are to be adopted for the resetting of the old monuments and the erection of the new ones; and they shall be responsible for the proper performance of the work.

On commencing operations, each section shall report to its government the plan of operations upon which they shall have jointly agreed; and they shall from time to time submit reports of the progress made by them in the said operations; and finally they shall present a full report, accompanied by the necessary drawings, signed by the Engineer-in-Chief and the two Associate Engineers on each side, as the official record of the International Boundary Commission.

ARTICLE VI.

The expenses of each section shall be defrayed by the government which appointed it; but the cost of the monuments and of their transportation shall be equally shared by both governments.

ARTICLE VII.

Whenever the number of the monuments to be set up shall be approximately known as the result of the labors of the preliminary reconnaissance-parties, the Engineers-in-Chief shall prepare an estimate of their cost, conveyance and setting up; and when such estimate shall have been approved by both governments, the mode of making the payment of the part to be paid by Mexico shall be determined by a special arrangement between the two governments.

ARTICLE VIII.

The work of the International Boundary Commission shall be pushed forward with all expedition; and the two governments hereby agree to regard the present convention as continuing in force until the conclusion of said work, provided that such time does not exceed four years and four months from the date of the exchange of the ratifications hereof.

ARTICLE IX.

The destruction or displacement of any of the monuments described herein, after the line shall have been located by the International Boundary Commission as aforesaid, is hereby declared to be a misdemeanor, punishable according to the justice of the country of the offender's nationality, if he be a citizen of either the United States or Mexico; and if the offender be of other nationality, then the misdemeanor shall be punishable according to the justice of either country where he may be apprehended.

This convention shall be ratified on both sides and the ratifications exchanged at Washington as soon as possible.

In testimony whereof we have signed this convention in duplicate, in the English and Spanish languages, and affixed hereunto the seals of our arms.

Done in the City of Washington this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

FRED'K T. FRELINGHUYSEN. [SEAL.]

M. ROMERO. [SEAL.]

[Spanish Text.]

[BOUNDARY CONVENTION.]

[1882.]

El Presidente de los Estados Unidos de América, por una parte, y el Presidente de los Estados Unidos Mexicanos, por la otra, deseando poner término á las dificultades á que da lugar la destruccion ó dislocacion de algunos de los monumentos que se construyeron para marcar la línea divisoria entre ambos países, han creido oportuno celebrar una convencion con el objeto de fijar la manera con que han de ser repuestos en sus lugares respectivos dichos monumentos y erijidos otros nuevos, si fuere necesario; y al efecto han nombrado sus Plenipotenciarios; á saber:

El Presidente de los Estados Unidos de América, al Sr. Frederick T. Frelinghuysen, Secretario de Estado de los Estados Unidos de América; y el Presidente de los Estados Unidos Mexicanos, al Señor Don Matias Romero, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos Mexicanos en Washington;

Quienes, despues de haberse cangeado sus respectivos plenos poderes y de encontrarlos en buena y debida forma, han convenido en los artículos siguientes:

ARTÍCULO I.

Con el objeto de conocer la actual condicion de los monumentos que marcan la línea divisoria entre los Estados Unidos de América y los Estados Unidos Mexicanos, establecida conforme á los tratados de 2 de Febrero de 1848 y de 3 de Diciembre de 1853, y determinar en general, qué monumentos hayan sido destruidos ó removidos de su lugar, en caso de que esto se haya verificado, y se necesite reconstruirlos ó volverlos á colocar, se hará un reconocimiento preliminar de la línea fronteriza por cada Gobierno, dentro de los seis meses siguientes al canje de ratificaciones de la presente convencion. Estos reconocimientos se harán por secciones que funcionarán bajo la direccion de oficiales del ejército regular de los respectivos países, y se verificarán obrando dichas secciones de concierto y de la manera en que lo convinieren los jefes de ambas. Los gastos de cada seccion de reconocimiento serán pagados por el gobierno en cuyo nombre funcionen.

Estas secciones de reconocimiento presentarán á sus respectivos gobiernos dentro de ocho meses contados desde el canje de ratificaciones del presente tratado, un informe:

(*a*) del estado en que se hallan actualmente los monumentos que marcan los límites;

(*b*) del número de los monumentos destruidos ó dislocados;

(*c*) de los lugares habitados ó habitables en donde fuere conveniente colocar los monumentos mas cerca entre sí en la línea divisoria, de como lo están ahora;

(*d*) de la clase de los nuevos monumentos que se requieran, ya sean de piedra ó de hierro, y de su número aproximado en cada caso.

ARTÍCULO II.

Antes de concluirse los reconocimientos preliminares estipulados en el Artículo I, cada gobierno nombrará una seccion de reconocimiento compuesta de un Ingeniero en Jefe y dos asociados, uno de los cuales será astrónomo práctico, y del número de ingenieros auxiliares y adjuntos que cada uno considere suficiente. Las dos secciones así organizadas, se reunirán en Paso del Norte ó en algun otro lugar conveniente que se acuerde, dentro de seis meses contados desde el canje de las ratificaciones de esta convencion; y formarán, cuando estén reunidas, la "Comision Internacional de Límites."

ARTÍCULO III.

La Comision Internacional de Límites tendrá la obligacion y la facultad y autorizacion de colocar en sus respectivos lugares á lo largo de la línea divisoria entre los Estados Unidos y México, desde el Océano Pacífico hasta el Rio Grande, los monumentos que hasta ahora habian estado situados en ella conforme á los tratados vigentes, siempre que dichos monumentos hayan sido dislocados; para erijir nuevos monumentos en el sitio de los primitivos, si estos hubieren sido destruidos; y para establecer monumentos nuevos en los puntos en que sea necesario y sean designados de comun acuerdo por los dos Comisionados Ingenieros en Jefe. Al reconstruir y reemplazar los antiguos monumentos y al proveer para el establecimiento de los nuevos, podrán consultarse los informes respectivos de las comisiones de reconocimiento estipulados en el Artículo I; con tal que la distancia entre dos monumentos contiguos nunca exceda de ocho mil metros y que éste límite pueda reducirse en aquellas partes de la linea que están habitadas ó sean habitables.

ARTÍCULO IV.

Cuando haya piedra en suficiente abundancia, podrán ser construidos los monumentos con piedra y en las otras localidades con hierro, de la figura de una columna sencilla en forma de pirámide

cuadrangular, con base que tenga seis piés de altura sobre el suelo, y con inscripciones adecuadas en sus lados. Estos monumentos tendrán cuando menos dos centímetros de espesor y un peso que no baje de quinientas libras cada uno.

El número aproximado de los que sean necesarios podrá determinarse en vista de los informes de las comisiones de reconocimiento preliminar, y los monumentos, debidamente fundidos y acabados, podrán ser enviados con anticipacion, de tiempo en tiempo, á los lugares designados por la Comision, para ser colocados en los lugares convenidos á medida que progresen los trabajos.

ARTÍCULO V.

Los Ingenieros en Jefe de ambas secciones determinarán de comun acuerdo los procedimientos científicos que deban adoptarse para la reposicion de los antiguos monumentos y la ereccion de los nuevos; y serán responsables de que la obra se haga debidamente.

Al comenzar los trabajos, cada seccion informará á su respectivo gobierno del plan de operaciones en que ambas hayan convenido; y de tiempo en tiempo les someterán informes de los progresos que dichas secciones hagan en las operaciones; y finalmente presentarán un informe completo, acompañado de los diseños necesarios, firmado por el Ingeniero en Jefe y los dos Ingenieros adjuntos de cada seccion, que será el informe oficial de la Comision Internacional de Límites.

ARTÍCULO VI.

Los gastos de cada seccion serán pagados por el gobierno que la haya nombrado; pero el costo de los monumentos y su transporte serán pagados por partes iguales por ambos gobiernos.

ARTÍCULO VII.

Cuando sea conocido aproximadamente el número de los monumentos que deban ser colocados, como resultado de los trabajos de las secciones de reconocimiento preliminar, los Ingenieros en Jefe formarán un presupuesto de su costo, conduccion y colocacion; y cuando este presupuesto haya sido aprobado por ambos gobiernos, se determinará, por medio de un arreglo especial entre los dos Gobiernos, la manera con que México pague la parte que le corresponda.

ARTÍCULO VIII.

Los trabajos de la Comision Internacional de Límites se proseguirán con la mayor prontitud; y los dos Gobiernos convienen

en considerar la presente convencion en todo su vigor y fuerza hasta que sean concluidas dichas obras; con tal que ese tiempo no exceda de cuatro años y cuatro meses, contados desde la fecha del canje de sus ratificaciones.

ARTÍCULO IX.

Se declara delito la destruccion ó dislocacion de cualquiera de los monumentos mencionados en este convencion, despues de que haya sido localizada la línea divisoria por la Comision Internacional de Límites, en los términos convenidos aquí, y será castigado conforme á las leyes del país cuya nacionalidad tengan los culpables, ya sean estos ciudadanos de los Estados Unidos ó ya de México; y si el culpable tuviere otra nacionalidad, el delito se castigará conforme á las leyes de cualquiera de los dos países en que sea aprehendido.

La presente convencion será ratificada por ambas partes, y las ratificaciones cangeadas en Washington, tan pronto como fuere posible.

En testimonio de lo cual hemos firmado este tratado por duplicado en las lenguas Inglesa y Española y puesto en él el sello de nuestras armas.

Hecho en la ciudad de Washington, el dia 29 de Julio del año del Señor de mil ochocientos ochenta y dos.

FRED^{K}. T. FRELINGHUYSEN. [SEAL.]
M. ROMERO. [SEAL.]

[1884.]

[BOUNDARY CONVENTION, RIO GRANDE AND RIO COLORADO.[a]]

Convention between the United States of America and the United States of Mexico, touching the Boundary-line between the two countries where it follows the bed of the Rio Grande and the Rio Colorado.

Whereas, in virtue of the 5th article of the Treaty of Guadalupe Hidalgo between the United States of America and the United States of Mexico, concluded February 2, 1848, and of the first Article of that of December 30th, 1853, certain parts of the dividing line between the two countries follow the middle of the channel

[a] [Signed at Washington November 12, 1884; ratification advised by the Senate of the United States March 18, 1885; modifications consented to by the Senate of the United States June 23, 1886; ratified by the President of the United States July 10, 1886; ratifications exchanged at Washington September 13, 1886; proclaimed September 14, 1886.]

of the Rio Grande and the Rio Colorado, to avoid difficulties which may arise through the changes of channel to which those rivers are subject through the operation of natural forces, the Government of the United States of America and the Government of the United States of Mexico have resolved to conclude a convention which shall lay down rules for the determination of such questions, and have appointed as their Plenipotentiaries:

The President of the United States of America, Frederick T. Frelinghuysen, Secretary of State of the United States; and the President of the United States of Mexico, Matias Romero, Envoy Extraordinary and Minister Plenipotentiary of the United Mexican States;

Who, after exhibiting their respective Full Powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The dividing line shall forever be that described in the aforesaid Treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

ARTICLE II.

Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid Treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.

ARTICLE III.

No artificial change in the navigable course of the river, by building jetties, piers, or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another than the original channel under the Treaty when

there is more than one channel, or by cutting waterways to shorten the navigable distance, shall be permitted to affect or alter the dividing line as determined by the aforesaid commissions in 1852 or as determined by Article I hereof and under the reservation therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change.

ARTICLE IV.

If any international bridge have been or shall be built across either of the rivers named, the point on such bridge exactly over the middle of the main channel as herein determined shall be marked by a suitable monument, which shall denote the dividing line for all the purposes of such bridge, notwithstanding any change in the channel which may thereafter supervene. But any rights other than in the bridge itself and in the ground on which it is built shall in event of any such subsequent change be determined in accordance with the general provisions of this convention.

ARTICLE V.

Rights of property in respect of lands which may have become separated through the creation of new channels as defined in Article II hereof, shall not be affected thereby, but such lands shall continue to be under the jurisdiction of the country to which they previously belonged.

In no case, however, shall this retained jurisdictional right affect or control the right of navigation common to the two countries under the stipulations of Article VII of the aforesaid Treaty of Guadaloupe Hidalgo; and such common right shall continue without prejudice throughout the actually navigable main channels of the said rivers, from the mouth of the Rio Grande to the point where the Rio Colorado ceases to be the international boundary, even though any part of the channel of said rivers, through the changes herein provided against, may be comprised within the territory of one of the two nations.

ARTICLE VI.

This convention shall be ratified by both parties in accordance with their respective constitutional procedure, and the ratifications exchanged in the City of Washington as soon as possible.

In witness whereof the undersigned Plenipotentiaries have hereunto set their hands and seals.

Done at the City of Washington, in duplicate, in the English and Spanish languages, this twelfth day of November, A. D. 1884.

FREDK. T. FRELINGHUYSEN [SEAL.]

[Spanish Text.]

[BOUNDARY CONVENTION.]

[1884.]

Convencion entre los Estados Unidos de América y los Estados Unidos Mexicanos, respecto de la linea divisoria entre los dos países, en la parte que sigue el lecho del Rio Grande y del Rio Colorado.

Por cuanto, en virtud del artículo V del tratado de Guadalupe Hidalgo, concluido el 2 de Febrero de 1848 entre los Estados Unidos de América y los Estados Unidos Mexicanos, y el artículo I del de 30 de Diciembre de 1853, algunas porciones de la linea divisoria entre los dos países siguen el centro del canal del Rio Grande y del Rio Colorado, con el fin de evitar las dificultades que puedan ocurrir por los cambios de canal á que dichos rios están sujetos por causa de fuerzas naturales, el Gobierno de los Estados Unidos de América y el Gobierno de los Estados Unidos Mexicanos, han resuelto concluir una convencion que fije reglas para resolver esas cuestiones, y han nombrado sus Plenipotenciarios:

El Presidente de los Estados Unidos de América á Frederick T. Frelinghuysen, Secretario de Estado de los Estados Unidos; y

El Presidente de los Estados Unidos Mexicanos, á Matías Romero, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos Mexicanos;

Quienes despues de haberse mostrado sus respectivos plenos poderes, y encontrádolos en buena y debida forma, han convenido en los siguientes artículos:

ARTÍCULO I.

La línea divisoria será siempre la fijada en dicho tratado y seguirá el centro del canal normal de los citados rios, á pesar de las alteraciones en las riberas ó en el curso de esos rios, con tal que dichas alteraciones se efectúen por causas naturales como la corrosion lenta y gradual, y el depósito del aluvion, y no por el abandono del canal existente del rio y la apertura de uno nuevo.

ARTÍCULO II.

Cualquiera otro cambio ocasionado por la fuerza de la corriente ya sea abriendo un nuevo canal, ó en donde haya mas de uno, haciendo mas profundo otro canal que no sea el que se marcó como parte de la línea divisoria al tiempo del reconocimiento hecho conforme á dicho tratado, no producirá alteracion alguna en la línea divisoria tal como fué fijada por los reconocimientos de la Comision internacional de límites en 1852; pero la línea fijada entonces seguirá siendo el centro del canal original aun cuando este llegare á secarse del todo, ó á obstruirse por el aluvion.

ARTÍCULO III.

Ningun cambio artificial en el curso navegable del rio, ya sea por la construccion de *jetties*, muelles ú obstrucciones que tiendan á desviar la corriente, ó produzcan depósitos del aluvion, ó por el uso de dragas para hacer mas profundo un canal distinto del primitivo del tratado, cuando haya mas de uno, ó para abrir nuevos canales con el objeto de acortar la distancia por agua, se permitirá que afecte ó altere la línea divisoria que determinó la Comision en 1852, ó la que fija el Artículo I de esta convencion, bajo la limitacion que en el se menciona. No se considerará como cambio artificial la proteccion de las riberas de uno ú otro lado, contra la corrosion cuando se pongan revestimientos de piedra ó de otro material que no proyecten indebidamente sobre la corriente del rio.

ARTÍCULO IV.

Si se hubiese construido ó se construyese un puente internacional sobre cualesquiera de los rios mencionados, se marcará el punto de dicho puente que quede exactamente sobre el centro del canal principal segun se ha determinado en este tratado, con un monumento á propósito, el cual denotará la línea divisoria, para todos los objetos de dicho puente, no obstante los cambios en el canal, que puedan ocurrir despues. Pero todos los derechos, que no sean los que se tengan sobre el puente mismo, ó sobre el terreno en el que esté edificado, se determinarán en el caso de algun cambio subsecuente, de acuerdo con las disposiciones generales de esta convencion.

ARTÍCULO V.

El derecho de propiedad sobre las tierras que pudieran quedar separadas por causa de la formacion de canales nuevos, de la manera que se define en el artículo II. de esta convencion, no se

afectará por esta causa; sino que las expresadas tierras continuarán perteneciendo á la jurisdiccion del país á que antes pertenecian.

En ningun caso sin embargo, afectará ó restringirá este derecho de jurisdiccion que ambas partes se reservan, el derecho de navegacion comun á los dos países, conforme á las estipulaciones del artículo VII del referido tratado de Guadalupe Hidalgo; y el expresado derecho comun de navegacion, continuará sin ningun menoscabo por todo el canal principal que sea navegable de hecho, en los expresados rios, desde la boca del Rio Grande hasta el punto en que el Rio Colorado cesa de ser el límite internacional, aun cuando una parte del canal de dichos rios, pueda, con motivo de los cambios previstos en esta convencion, llega á comprenderse en el territorio de una de las dos naciones.

ARTÍCULO VI.

La presente convencion será ratificada por ambas partes, de acuerdo con sus respectivos procedimientos constitucionales, y las ratificaciones se cangearán en la ciudad de Washington, tan pronto como fuere posible.

En testimonio de lo cual, los Plenipotenciarios infrascritos la han firmado y sellado.

Hecho por duplicado en la ciudad de Washington, en las lenguas Inglesa y Española, el dia doce de Noviembre de mil ochocientos ochenta y cuatro.

M. ROMERO. [SEAL.]

[1889.]

[CONVENTION ESTABLISHING THE PRESENT INTERNATIONAL BOUNDARY COMMISSION.[a]]

The United States of America and the United States of Mexico, desiring to facilitate the carrying out of the principles contained in the treaty of November 12, 1884, and to avoid the difficulties occa-

[a] [Signed at Washington March 1, 1889; ratification advised by the Senate of the United States May 7, 1890; ratified by the President of the United States December 6, 1890; ratifications exchanged at Washington December 24, 1890; proclaimed December 26, 1890. The duration of this convention which by Article 9 was fixed at 5 years, was extended for one year from December 24, 1895 by the convention signed at the City of Washington October 1, 1895, (infra, page 79); for one year from December 24, 1896 by the convention signed at Washington November 6, 1896, (Treaties, page 1179); for one year from December 24, 1897 by the convention signed at Washington October 29, 1897, (Treaties, page 1181); for one year from December 24, 1898 by the convention signed at Washington December 2, 1898 (Treaties, page 1182) and for one year from December 24, 1899 by the convention signed at Washington December 22, 1899, (Treaties, page 1191).]

sioned by reason of the changes which take place in the bed of the Rio Grande and that of the Colorado river, in that portion thereof where they serve as a boundary between the two Republics, have resolved to conclude a treaty for the attainment of these objects, and have appointed as their respective Plenipotentiaries:

The President of the United States of America, Thomas F. Bayard, Secretary of State of the United States of America; and

The President of the United States of Mexico, Matias Romero, Envoy Extraordinary and Minister Plenipotentiary of the United States of Mexico, at Washington;

Who, after having exhibited their respective full powers, and having found the same to be in good and due form, have agreed upon the following articles:

ARTICLE I.

All differences or questions that may arise on that portion of the frontier between the United States of America and the United States of Mexico where the Rio Grande and the Colorado rivers form the boundary line, whether such differences or questions grow out of alterations or changes in the bed of the aforesaid Rio Grande and that of the aforesaid Colorado River, or of works that may be constructed in said rivers, or of any other cause affecting the boundary line, shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of said differences or questions.

ARTICLE II.

The International Boundary Commission shall be composed of a Commissioner appointed by the President of the United States of America, and of another appointed by the President of the United States of Mexico, in accordance with the constitutional provisions of each country, of a Consulting Engineer, appointed in the same manner by each Government, and of such Secretaries and Interpreters as either Government may see fit to add to its Commission. Each Government separately shall fix the salaries and emoluments of the members of its Commission.

ARTICLE III.

The International Boundary Commission shall not transact any business unless both Commissioners are present. It shall sit on the frontier of the two contracting countries, and shall establish itself at such places as it may determine upon; it shall, however,

repair to places at which any of the difficulties or questions mentioned in this convention may arise, as soon as it shall have been duly notified thereof.

ARTICLE IV.

When, owing to natural causes, any change shall take place in the bed of the Rio Grande or in that of the Colorado River, in that portion thereof wherein those rivers form the boundary line between the two countries, which may affect the boundary line, notice of that fact shall be given by the proper local authorities on both sides to their respective Commissioners of the International Boundary Commission, on receiving which notice it shall be the duty of the said Commission to repair to the place where the change has taken place or the question has arisen, to make a personal examination of such change, to compare it with the bed of the river as it was before the change took place, as shown by the surveys, and to decide whether it has occurred through avulsion or erosion, for the effects of articles I and II of the convention of November 12, 1884; having done this, it shall make suitable annotations on the surveys of the boundary line.

ARTICLE V.

Whenever the local authorities on any point of the frontier between the United States of America and the United States of Mexico, in that portion in which the Rio Grande and the Colorado River form the boundary between the two countries, shall think that works are being constructed, in either of those rivers, such as are prohibited by article III of the convention of November 12, 1884, or by article VII of the treaty of Guadalupe Hidalgo of February 2, 1848, they shall so notify their respective Commissioners, in order that the latter may at once submit the matter to the International Boundary Commission, and that said Commission may proceed, in accordance with the provisions of the foregoing article, to examine the case, and that it may decide whether the work is among the number of those which are permitted, or of those which are prohibited by the stipulations of those treaties.

The Commission may provisionally suspend the construction of the works in question pending the investigation of the matter, and if it shall fail to agree on this point, the works shall be suspended, at the instance of one of the two Governments.

ARTICLE VI.

In either of these cases, the Commission shall make a personal examination of the matter which occasions the change, the question or the complaint, and shall give its decision in regard to the same, in doing which it shall comply with the requirements established by a body of regulations to be prepared by the said Commission and approved by both Governments.

ARTICLE VII.

The International Boundary Commission shall have power to call for papers and information, and it shall be the duty of the authorities of each of the two countries to send it any papers that it may call for, relating to any boundary question in which it may have jurisdiction in pursuance of this convention.

The said Commission shall have power to summon any witnesses whose testimony it may think proper to take, and it shall be the duty of all persons thus summoned to appear before the same and to give their testimony, which shall be taken in accordance with such by-laws and regulations as may be adopted by the Commission and approved by both Governments. In case of the refusal of a witness to appear, he shall be compelled to do so, and to this end the Commission may make use of the same means that are used by the courts of the respective countries to compel the attendance of witnesses, in conformity with their respective laws.

ARTICLE VIII.

If both Commissioners shall agree to a decision, their judgment shall be considered binding upon both Governments, unless one of them shall disapprove it within one month reckoned from the day on which it shall have been pronounced. In the latter case, both Governments shall take cognizance of the matter, and shall decide it amicably, bearing constantly in mind the stipulation of Article XXI of the treaty of Guadalupe Hidalgo of February 2, 1848.

The same shall be the case when the Commissioners shall fail to agree concerning the point which occasions the question, the complaint or the change, in which case each Commissioner shall prepare a report, in writing, which he shall lay before his Government.

ARTICLE IX.

This convention shall be ratified by both parties, in accordance with the provisions of their respective constitutions, and the ratifications thereof shall be exchanged at Washington as speedily as

possible and shall be in force from the date of the exchange of ratification for a period of five years.

In testimony whereof the undersigned Plenipotentiaries have signed and sealed it.

Done in duplicate, in the city of Washington, in the English and Spanish languages, on the 1st day of March one thousand eight hundred and eighty-nine.

T. F. BAYARD [SEAL.]
M. ROMERO. [SEAL.]

[Spanish Text.]

[CONVENTION ESTABLISHING THE PRESENT INTERNATIONAL BOUNDARY COMMISSION.]

[1889.]

Los Estados Unidos de América y los Estados Unidos Mexicanos, deseando facilitar la ejecucion de los principios contenidos en el tratado de doce de Noviembre de mil ochocientos ochenta y cuatro, y evitar las dificultades ocasionadas con motivo de los cambios que tienen lugar en el cauce de los rios Bravo del Norte y Colorado, en la parte que sirven de límite entre las dos Repúblicas, han resuelto concluir un tratado que satisfaga estos objetos, y han nombrado sus respectivos Plenipotenciarios:

El Presidente de los Estados Unidos de América, á Thomas F. Bayard, Secretario de Estado de los Estados Unidos de América; y

El Presidente de los Estados Unidos Mexicanos, á Matías Romero, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos Mexicanos, en Washington;

Quienes, despues de haberse mostrado sus respectivos plenospoderes, y encontrádolos en buena y debida forma, han convenido en los artículos siguientes:

ARTÍCULO I.

Todas las diferencias ó cuestiones que se susciten en la parte de la frontera entre los Estados Unidos de América y los Estados Unidos Mexicanos, en que sirven de línea divisoria los rios Bravo del Norte y Colorado, ya sea que provengan de alteraciones ó cambios en el lecho de los expresados rios Bravo del Norte y Colorado; ya de obras que se construyan en los mismos; ó ya de cualquiera otro motivo que afecte á la línea fronteriza, se someterán al exámen y decision de una Comision Internacional de Límites, la cual tendrá jurisdiccion exclusiva sobre dichas diferencias ó cuestiones.

ARTÍCULO II.

La Comision Internacional de Límites se compondrá de un Comisionado nombrado por el Presidente de los Estados Unidos de América y otro nombrado por el Presidente de los Estados Unidos Mexicanos, conforme á las prescripciones constitucionales de cada país; de un Ingeniero Consultor, nombrado en la misma forma por cada Gobierno, y de los Secretarios é Intérpretes que cada Gobierno crea conveniente agregar á su respectiva Comision. Cada Gobierno fijará separadamente los sueldos y emolumentos de los miembros de su Comision.

ARTÍCULO III.

La Comision Internacional de Límites no podrá funcionar sino cuando estuvieren presentes los dos Comisionados. Residirá precisamente en la frontera de los dos países contratantes y se establecerá en los lugares que ella determinare; pero se trasladará sin dilacion á los lugares en que ocurra cualquiera de las dificultades ó cuestiones mencionadas en la presente convencion, tan luego como se le haga la notificacion correspondiente.

ARTÍCULO IV.

Cuando, por causas naturales, ocurriere alguna alteracion en el cauce del rio Bravo del Norte ó del rio Colorado, en la parte en que estos rios sirven de límite entre los dos países, que afecte la línea divisoria, se notificará este hecho por la autoridad local respectiva de uno ú otro lado, al Comisionado respectivo de la Comision Internacional de Límites, la cual tendrá obligacion, al recibir ese aviso, de trasladarse al lugar del cambio ó cuestion; examinará personalmente el cambio indicado, lo comparará con el cauce que seguia el rio ántes de que este cambio tuviera lugar, segun aparezca de los planos respectivos, y decidirá si se ha verificado por avulsion ó corrosion, para los efectos de los artículos I y II de la Convencion de doce de Noviembre de mil ochocientos ochenta y cuatro, haciendo las anotaciones correspondientes en los planos de la línea divisoria.

ARTÍCULO V.

Siempre que la autoridad local de cualquier punto de la frontera entre los Estados Unidos de América y los Estados Unidos Mexicanos, en la parte en que los rios Bravo del Norte y Colorado sirven de límite á los dos países, creyere que se están construyendo obras

en cualquiera de estos rios, que sean de las prohibidas por el artículo III de la Convencion de doce de Noviembre de mil ochocientos ochenta y cuatro, ó por el artículo VII del tratado de Guadalupe Hidalgo de dos de Febrero de mil ochocientos cuarenta y ocho, lo notificará al Comisionado respectivo, para que este someta, desde luego, el punto á la Comision Internacional de Límites, y esta proceda, conforme á las prescripciones del artículo precedente, á examinar el caso, y decida si la obra es de las permitidas ó de las prohibidas por las estipulaciones de aquellos tratados.

La Comision podrá suspender, provisionalmente, la construccion de las obras en cuestion, mientras se examina el asunto, y si no se pusiere de acuerdo sobre este punto, se suspenderán las obras á peticion de uno de los dos Gobiernos.

ARTÍCULO VI.

En cualquiera de estos casos, la Comision hará un exámen personal del asunto que motivare el cambio, cuestion ó queja, y dará su fallo respecto del mismo; para lo cual observará los requisitos que establezca un reglamento formado por la misma Comision y aprobado por los dos Gobiernos.

ARTÍCULO VII.

La Comision Internacional de Límites tendrá facultad de pedir documentos é informes, y las autoridades de cada uno de los dos países tendrán el deber de enviarle cualesquiera documentos que ella les pida, referentes á cualquiera cuestion de límites en que tenga jurisdiccion conforme á esta Convencion.

La misma Comision tendrá facultad de citar á los testigos cuyas declaraciones crea conveniente tomar, y las personas citadas tendrán el deber de comparecer ante la misma y de dar sus declaraciones, las cuales se tomarán de conformidad con las leyes y reglamentos que adopte la Comision y aprueben ambos Gobiernos. En caso de que algun testigo se rehuse á comparecer, se le obligará á ello, usando al efecto la Comision de los mismos arbitrios que tengan los tribunales del país respectivo para hacer comparecer testigos, de acuerdo con sus respectivas leyes.

ARTÍCULO VIII.

Si ambos Comisionados estuvieren de acuerdo en una resolucion, su fallo se considerará obligatorio para ambos Gobiernos, á no ser que alguno de ellos lo desaprobare, dentro de un mes contado desde

el dia en que se pronuncie. En este último caso, ambos Gobiernos se avocarán el conocimiento del asunto y lo decidirán amistosamente, en la forma que les pareciere justificada y conveniente, teniendo siempre presente la estipulacion del artículo XXI del tratado de Guadalupe Hidalgo de dos de Febrero de mil ochocientos cuarenta y ocho.

Otro tanto sucederá cuando los Comisionados no se pongan de acuerdo respecto del punto que motiva la cuestion, queja ó cambio, en cuyo caso cada Comisionado formulará un dictámen por escrito que presentará á su respectivo Gobierno.

ARTÍCULO IX.

La presente Convencion será ratificada por ambas partes, de acuerdo con sus respectivos procedimientos constitucionales, y las ratificaciones se cangearán en Washington tan pronto como fuere posible, y permanecerá en vigor por un período de cinco años contados desde la fecha del canje de ratificaciones.

En testimonio de lo cual los Plenipotenciarios infrascritos la han firmado y sellado.

Hecha por duplicado, en la Ciudad de Washington, en las lenguas inglesa y española, el dia primero de Marzo de mil ochocientos ochenta y nueve.

T. F. BAYARD. [SEAL.]
M. ROMERO. [SEAL.]

[1895.]

[CONVENTION EXTENDING FOR ONE YEAR THE DURATION OF THE CONVENTION ESTABLISHING THE PRESENT INTERNATIONAL BOUNDARY COMMISSION.*]

Whereas the United States of America and the United States of Mexico desire to comply fully with the provisions of the Convention concluded and signed at Washington, March 1, 1889, to facilitate the carrying out of the principles contained in the Convention of November 12, 1884, between the two High Contracting Parties, and to avoid the difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande and Colo-

*[Signed at Washington October 1, 1895; ratification advised by the Senate of the United States December 17, 1895; ratified by the President of the United States December 20, 1895; ratifications exchanged at Washington December 21, 1895; proclaimed December 21, 1895.]

rado River in that portion thereof where they serve as a boundary line between the two Republics;

And whereas the time fixed by Article IX of the Convention of March 1, 1889, will expire December 24, 1895;

And whereas the two High Contracting Parties deem it expedient to agree upon an extension of the time stipulated in Article IX aforesaid, to the end that the International Boundary Commission may conclude the examination and decision of the cases submitted to it, they have appointed for this purpose their respective plenipotentiaries, to wit:

The President of the United States of America, Richard Olney, Secretary of State of the United States of America; and

The President of the United States of Mexico, Matias Romero, Envoy Extraordinary and Minister Plenipotentiary of the United States of Mexico at Washington,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following article:

ARTICLE.

The duration of the Convention of March 1, 1889, between the United States of America and the United States of Mexico, which, in virtue of the provisions of Article IX thereof, was to continue in force for a period of five years from the date of the exchange of its ratifications, and which will terminate December 24, 1895, is hereby extended for the period of one year from that date.

This Convention shall be ratified by the High Contracting Parties in conformity with their respective Constitutions, and its ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, we, the undersigned, in virtue of our respective full powers, have signed this convention, in duplicate, in the English and Spanish languages, and have thereunto affixed our respective seals.

Done at the City of Washington, this first day of October in the year of our Lord one thousand eight hundred and ninety-five.

RICHARD OLNEY [SEAL.]
M. ROMERO. [SEAL.]

[Spanish Text.]

[CONVENTION EXTENDING FOR ONE YEAR THE DURATION OF THE PRESENT INTERNATIONAL BOUNDARY COMMISSION.]

[1895.]

Deseando los Estados Unidos de América y los Estados Unidos Mexicanos dar pleno cumplimiento á las estipulaciones de la Convención concluida y firmada en Washington el 1° de Marzo de 1889 para facilitar la ejecucion de los principios contenidos en el Tratado de 12 de Noviembre de 1884, firmado entre las dos Altas Partes contratantes, y evitar las dificultades ocasionadas con motivo de los cambios que tienen lugar en el cance de los rios Bravo del Norte y Colorado en aquellas de sus partes que sirven de límite á las dos Repúblicas;

Y debiendo expirar el 24 de Diciembre de 1895 el plazo fijado por el artículo IX de la Convencion de 1° de Marzo de 1889;

Y considerando conveniente las dos Altas Partes Contratantes prorogar el plazo estipulado en el Artículo IX de dicha Convención, á fin de que la Comisión Internacional de Límites pueda concluir el exámen y decisión de los casos que se le han sometido, han nombrado con ese objeto sus respectivos Plenipotenciarios, á saber:

El Presidente de los Estados Unidos de América á Richard Olney, Secretario de Estado de los Estados Unidos de América; y

El Presidente de los Estados Unidos Mexicanos á Matias Romero, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos Mexicanos en Washington,

Quienes, despues de haberse comunicado sus respectivos plenos poderes, encontrándolos en buena y debida forma, y puestos de acuerdo entre sí, han convenido en el artículo siguiente:

ARTÍCULO ÚNICO.

La duracion de la Convencion de 1° de Marzo de 1889, firmado entre los Estados Unidos de América y los Estados Unidos Mexicanos, que, conforme á las estipulaciones de su Artículo IX, deberia permanecer vigente por el plazo de cinco años contados desde la fecha del cange de sus ratificaciones y que terminará el 24 de Diciembre de 1895, se proroga por la presente por el período de un año contado desde esta última fecha.

Esta Convención sera ratificada por las dos Altas Partes Contratantes de acuuerdo con sus respectivas Constituciones, y las ratificaciones se cangearán en Washington tan pronto como sea posible.

En fe de lo cual, nos, los infrascritos, en virtud de nuestros respectivos plenos poderes, hemos firmado esta Convención por duplicado, en las lenguas Inglesa é Española, y hemos puesto nuestros respectivos sellos.

Hecho en la Ciudad de Washington, el dia primero de Octubre del año de Nuestro Señor mil ochocientos noventa y cinco.

RICHARD OLNEY [SEAL.]
M. ROMERO [SEAL.]

[1900.]

[CONVENTION CONTINUING INDEFINITELY THE PRESENT INTERNATIONAL BOUNDARY COMMISSION.][a]

Whereas the United States of America and the United States of Mexico desire to give full effect to the provisions of the Convention concluded and signed in Washington March 1, 1889, to facilitate the execution of the provisions contained in the Treaty signed by the two High Contracting Parties on the 12th of November 1884, and to avoid the difficulties arising from the changes which are taking place in the beds of the Bravo del Norte and Colorado Rivers in those parts which serve as a boundary between the two Republics;

And whereas the period fixed by Article IX of the Convention of March 1, 1889, extended by the Conventions of October 1, 1895, November 6, 1896, October 29, 1897, December 2, 1898, and December 22, 1899, expires on the 24th of December 1900;

And whereas the two High Contracting Parties deem it expedient to indefinitely continue the period fixed by Article IX of the Convention of March 1, 1889, and by the sole article of the Convention of October 1, 1895, that of November 6, 1896, that of October 29, 1897, that of December 2, 1898, and that of December 22, 1899, in order that the International Boundary Commission may be able to continue the examination and decision of the cases submitted to it, they have, for that purpose, appointed their respective Plenipotentiaries, to wit:

The President of the United States of America, John Hay, Secretary of State of the United States of America; and

[a] Signed at Washington November 21, 1900; ratification advised by the Senate of the United States December 15, 1900; ratified by the President of the United States December 24, 1900; ratifications exchanged at Washington December 24, 1900; proclaimed December 24, 1900.]

The President of the United States of Mexico, Manuel de Azpíroz, Ambassador Extraordinary and Plenipotentiary of the United States of Mexico at Washington;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Article:

ARTICLE.

The said Convention of March 1, 1889, as extended on the several dates above mentioned, and the Commission established thereunder shall continue in force and effect indefinitely, subject, however, to the right of either contracting party to dissolve the said Commission by giving six months' notice to the other; but such dissolution of the Commission shall not prevent the two governments from thereafter agreeing to revive the said Commission, or to reconstitute the same, according to the terms of the said Convention; and the said convention of March 1, 1889, as hereby continued, may be terminated twelve months after notice of a desire for its termination shall have been given in due form by one of the two contracting parties to the other.

This Convention shall be ratified by the two High Contracting Parties in conformity with their respective Constitutions, and the ratifications shall be exchanged in Washington as soon as possible.

In testimony whereof, we, the undersigned, by virtue of our respective powers, have signed this Convention in duplicate, in the English and Spanish languages, and have affixed our respective seals.

Done in the City of Washington on the 21st day of November, one thousand nine hundred.

JOHN HAY [SEAL.]
M. DE AZPÍROZ [SEAL.]

[Spanish Text.]

[CONVENTION CONTINUING INDEFINITELY THE PRESENT INTERNATIONAL BOUNDARY CONVENTION.]

[1900.]

Deseando los Estados Unidos de América y los Estados Unidos Mexicanos dar entero cumplimiento á las estipulaciones de la Convención concluida y firmada en Washington el 1° de Marzo de 1889, para facilitar la ejecución de los principios contenidos en el

Tratado firmado por las dos Altas Partes Contratantes el 12 de Noviembre de 1884, y evitar las dificultades ocasionadas por los cambios en los cauces de los rios Bravo del Norte y Colorado, en las partes que sirven de límite á las dos Repúblicas;

Y debiendo expirar el 24 de Diciembre de 1900 el plazo fijado en el artículo IX de la Convención de 1° de Marzo de 1889, ampliado por las Convenciones de 1° de Octubre de 1895, 6 de Noviembre de 1896, 29 de Octubre de 1897, 2 de Diciembre de 1898 y 22 de Diciembre de 1899;

Y considerando conveniente las dos Altas Partes Contratantes prorrogar indefinidamente el plazo estipulado en el artículo IX de la Convención de 1° de Marzo de 1889, y en el artículo único de las de 1° de Octubre de 1895, 6 de Noviembre de 1896, 29 de Octubre de 1897, 2 de Diciembre de 1898 y 22 de Diciembre de 1899, á fin de que la Comisión Internacional de límites pueda continuar examinando y decidiendo los casos á ella sometidos, han nombrado con tal objeto sus respectivos Plenipotenciarios, á saber:

El Presidente de los Estados Unidos de América á John Hay, Secretario de Estado de los Estados Unidos de América; y

El Presidente de los Estados Unidos Mexicanos á Manuel de Azpíroz, Embajador Extraordinario y Plenipotenciario de los Estados Unidos Mexicanos en Washington;

Quienes, después de haberse comunicado sus respectivos plenos poderes, encontrándolos en buena y debida forma, han acordado y concluido el artículo siguiente:

ARTÍCULO ÚNICO.

Dicha Convención del 1° de Marzo de 1889, en los términos que ha sido prorrogada en las diferentes fechas arriba referidas, y la Comisión creada por ella subsistirán y tendrán efecto indefinidamente, sin perjuicio del derecho de cada una de las Partes Contratantes para disolver la Comisión dando aviso á la otra Parte con una anticipación de seis meses, y sin que esa disolución de la Comisión impida á los dos Gobiernos convenir más tarde en renovar dicha Comisión, ó reconstituirla de acuerdo con las prevenciones de la Convención citada; y la misma Convención del 1° de Marzo de 1889, prorrogada por la presente, podrá cesar doce meses después de que una de las dos partes contratantes haya comunicado en debida forma á la otra parte, el deseo de ponerle término.

Esta Convención será ratificada por las dos Altas Partes Contratantes, de acuerdo con sus respectivas Constituciones, y las ratificaciones se canjearán en Washington tan pronto como sea posible.

En fé de lo cual, los infrascritos, en virtud de nuestros respectivos plenos poderes, hemos firmado esta Convención, por duplicado en las lenguas Inglesa y española, y les hemos puesto nuestros respectivos sellos.

Hecho en la ciudad de Washington, el dia 21 de Noviembre de mil novecientos.

JOHN HAY [SEAL.]
M. DE AZPÍROZ [SEAL.]

[1905.]

[CONVENTION FOR THE ELIMINATION OF THE BANCOS IN THE RIO GRANDE FROM THE EFFECTS OF ARTICLE II OF THE TREATY OF NOVEMBER 12, 1884.[a]]

Whereas, for the purpose of obviating the difficulties arising from the application of Article V of the Treaty of Guadalupe-Hidalgo, dated February 2, 1848, and Article I of the Treaty of December 30, 1853, both concluded between the United States of America and Mexico—difficulties growing out of the frequent changes to which the beds of the Rio Grande and Colorado River are subject—there was signed in Washington on November 12, 1884, by the Plenipotentiaries of the United States and Mexico, a convention containing the following stipulations:

"ARTICLE I.—The dividing line shall forever be that described in the aforesaid Treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

"ARTICLE II.—Any other change, wrought by the force of the current whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid Treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852, but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits."

[a Signed at Washington March 20, 1905; ratifications advised by the Senate of the United States February 28, 1907; ratified by the President of the United States March 13, 1907; ratifications exchanged at Washington May 31, 1907; proclaimed June 5, 1907.]

Whereas, as a result of the topographical labors of the Boundary Commission created by the Convention of March 1, 1889, it has been observed that there is a typical class of changes effected in the bed of the Rio Grande, in which, owing to slow and gradual erosion, coupled with avulsion, said river abandons its old channel and there are separated from it small portions of land known as "bancos" bounded by the said old bed, and which, according to the terms of Article II of the aforementioned Convention of 1884, remain subject to the dominion and jurisdiction of the country from which they have been separated;

Whereas, said "bancos" are left at a distance from the new river bed, and, by reason of the successive deposits of alluvium, the old channel is becoming effaced, the land of said "bancos" becomes confused with the land of the "bancos" contiguous thereto, thus giving rise to difficulties and controversies, some of an international and others of a private character;

Whereas, the labors of the International Boundary Commission, undertaken with the object of fixing the boundary line with reference to the "bancos," have demonstrated that the application to these "bancos" of the principle established in Article II of the Convention of 1884 renders difficult the solution of the controversies mentioned, and, instead of simplifying, complicates the said boundary line between the two countries:

Therefore, the Governments of the United States of America and the United States of Mexico, being desirous to enter into a convention to establish more fitting rules for the solution of such difficulties, have appointed as their Plenipotentiaries—

That of the United States of America, Alvey A. Adee, Acting Secretary of State of the United States;

That of the United States of Mexico, its Ambassador Extraordinary and Plenipotentiary, Licenciado Don Manuel de Azpíroz;

Who, after exhibiting their full powers, found to be in good and due form, have agreed to the following articles:

ARTICLE I.

The fifty-eight (58) bancos surveyed and described in the report of the consulting engineers, dated May 30, 1898, to which reference is made in the record of proceedings of the International Boundary Commission, dated June 14, 1898, and which are drawn on fifty-four (54) maps on a scale of one to five thousand (1 to 5,000), and three index maps, signed by the Commissioners and by the Pleni-

potentiaries appointed by the convention, are hereby eliminated from the effects of Article II of the Treaty of November 12, 1884.

Within the part of the Rio Grande comprised between its mouth and its confluence with the San Juan River the boundary line between the two countries shall be the broken red line shown on the said maps—that is, it shall follow the deepest channel of the stream—and the dominion and jurisdiction of so many of the aforesaid fifty-eight (58) bancos as may remain on the right bank of the river shall pass to Mexico, and the dominion and jurisdiction of those of the said fifty-eight (58) bancos which may remain on the left bank shall pass to the United States of America.

ARTICLE II.

The International Commission shall, in the future, be guided by the principle of elimination of the bancos established in the foregoing article, with regard to the labors concerning the boundary line throughout that part of the Rio Grande and the Colorado River which serves as a boundary between the two nations. There are hereby excepted from this provision the portions of land segregated by the change in the bed of the said rivers having an area of over two hundred and fifty (250) hectares, or a population of over two hundred (200) souls, and which shall not be considered as bancos for the purposes of this treaty and shall not be eliminated, the old bed of the river remaining, therefore, the boundary in such cases.

ARTICLE III.

With regard to the bancos which may be formed in future, as well as to those already formed but which are not yet surveyed, the Boundary Commission shall proceed to the places where they have been formed, for the purpose of duly applying Articles I and II of the present convention, and the proper maps shall be prepared in which the changes that have occurred shall be shown, in a manner similar to that employed in the preparation of the maps of the aforementioned fifty-eight (58) bancos.

As regards these bancos, as well as those already formed but not surveyed, and those that may be formed in future, the Commission shall mark on the ground, with suitable monuments, the bed abandoned by the river, so that the boundaries of the bancos shall be clearly defined.

On all separated land on which the successive alluvium deposits have caused to disappear those parts of the abandoned channel

which are adjacent to the river, each of the extremities of said channel shall be united by means of a straight line to the nearest part of the bank of the same river.

ARTICLE IV.

The citizens of either of the two contracting countries who, by virtue of the stipulations of this convention, shall in future be located on the land of the other may remain thereon or remove at any time to whatever place may suit them, and either keep the property which they possess in said territory or dispose of it. Those who prefer to remain on the eliminated bancos may either preserve the title and rights of citizenship of the country to which the said bancos formerly belonged, or acquire the nationality of the country to which they will belong in the future.

Property of all kinds situated on the said bancos shall be inviolably respected, and its present owners, their heirs, and those who may subsequently acquire the property legally, shall enjoy as complete security with respect thereto as if it belonged to citizens of the country where it is situated.

ARTICLE V.

This convention shall be ratified by the two high contracting parties in accordance with their respective Constitutions, and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, we, the undersigned, by virtue of our respective powers, have signed the present convention, both in the English and Spanish languages, and have thereunto affixed our seals.

Done in duplicate, at the City of Washington, this 20th day of March, one thousand nine hundred and five.

ALVEY A. ADEE [SEAL]
M. DE AZPÍROZ [SEAL]

PROTOCOL OF SIGNATURE.

The Plenipotentiaries of the United States and Mexico who, on March 20, 1905, signed the treaty for the elimination of bancos in the Rio Grande, having omitted involuntarily to sign the maps mentioned in Article I thereof and which form a part of the said instrument, the undersigned Plenipotentiaries have met together this day and signed the above mentioned maps in conformity

with the authority conferred upon them by their respective Governments.

In witness whereof they have signed the present Protocol of Signature and have affixed their seals thereto.

Done at Washington this fourteenth day of November one thousand nine hundred and five.

[SEAL] ALVEY A. ADEE
[SEAL] JOSÉ F. GODOY

[Spanish Text.]

[CONVENTION FOR THE ELIMINATION OF THE BANCOS IN THE RIO GRANDE FROM THE EFFECTS OF ARTICLE II OF THE TREATY OF NOVEMBER 12, 1884.]

[1905]

Por cuanto con el objeto de evitar las dificultades que resultaban de la aplicación de los artículos V del Tratado de Guadalupe Hidalgo, del 2 de Febrero de 1848, y I del Tratado del 30 de Diciembre de 1853, celebrados entre los Estados Unidos de América y México, dificultades originadas por los frecuentes cambios á que en su cauce están sujetos los ríos Bravo y Colorado, se firmó en Washington en 12 de Noviembre de 1884 por los Plenipotenciarios de los Estados Unidos y de México, una Convención que contiene las siguientes estipulaciones:

"ARTÍCULO I.—La línea divisoria será siempre la fijada en dicho Tratado, y seguirá el centro del canal normal de los citados ríos, á pesar de las alteraciones en las riberas ó en el curso de esos ríos, con tal que dichas alteraciones se efectúen por causas naturales como la corrosión lenta y gradual, y el depósito del aluvión, y nó por el abandono del canal existente del río y la apertura de uno nuevo.

"ARTÍCULO II.—Cualquier otro cambio ocasionado por la fuerza de la corriente, ya sea abriendo un nuevo canal, ó en donde haya más de uno, haciendo más profundo otro canal que no sea el que se marcó como parte de la línea divisoria al tiempo del reconocimiento hecho conforme á dicho Tratado, no producirá alteración alguna en la línea divisoria tal como fué fijada por los reconocimientos de la Comisión Internacional de Límites en 1852; pero la línea fijada entonces, seguirá siendo el centro del canal original, aun cuando éste llegare á secarse del todo, ó á obstruirse por el aluvión."

Por cuanto en virtud de los trabajos topográficos de la Comisión de Límites creada por la Convención de 10 de Marzo de 1889, se ha

observado que hay una clase típica de cambios efectuados en el cauce del río Bravo, en los cuales, á causa de la corrosión lenta y gradual, combinada con la avulsión, dicho río abandona su antiguo canal y se separan de él pequeñas porciones de terreno conocidas con el nombre de "bancos," limitadas por el referido antiguo cauce y que, según los términos del Artículo II de la expresada Convención de 1884, quedan sujetas al dominio y jurisdicción del país de donde han sido separadas;

Por cuanto dichos bancos quedan distantes del nuevo cauce del río y en razón de los depósitos sucesivos de aluvión se borra el antiguo canal, confundiéndose el terreno de los mismos bancos con el de los colindantes y originándose dificultades y controversias, unas de orden internacional y otras de orden privado;

Por cuanto los trabajos de la Comisión Internacional de Límites, emprendidos con el objeto de fijar la línea divisoria con relación á los bancos, han demostrado que la aplicación á éstos del principio establecido en el artículo II de la Convención de 1884 hace difícil la solución de las mencionadas controversias, y en vez de simplificar, complica dicha línea divisoria entre los dos países:

Por tanto, los Gobiernos de los Estados Unidos de América y de los Estados Unidos de México, deseosos de celebrar una Convención que establezca reglas más acertadas para resolver tales dificultades, han nombrado como sus plenipotenciarios,

El de los Estados Unidos de América, á Alvey A. Adee, Secretario de Estado interino de los Estados Unidos;

El de los Estados Unidos de México á su Embajador Extraordinario y Plenipotenciario, Licenciado Don Manuel de Azpíroz;

Quienes despues de exhibir sus plenos poderes, que encontraron en buena y debida forma, han convenido en los artículos siguientes:

ARTÍCULO I.

Los cincuenta y ocho (58) bancos medidos y descritos en el informe de los Ingenieros Consultores, del 30 de Mayo de 1898, á que se refiere el acta de la Comisión Internacional de Límites del 14 de Junio de 1898, dibujados en cincuenta y cuatro (54) planos, en escala de uno á cinco mil (1 á 5,000), y tres planos índices, firmados por los Comisionados y por los Plenipotenciarios nombrados para esta Convención, quedan eliminados de los efectos del artículo II del Tratado del 12 de Noviembre de 1884.

La línea divisoria entre los dos países será, en el trayecto del río Bravo, comprendido entre su desembocadura y su confluencia con el río San Juan, la línea roja quebrada que consta en los expresados

planos; esto es, seguirá por el canal más profundo de la corriente, y el dominio y jurisdicción de aquellos de los citados cincuenta y ocho (58) bancos que queden en la margen derecha del río pasarán á México; y el dominio y jurisdicción de aquellos de los citados cincuenta y ocho (58) bancos que queden en la margen izquierda, pasarán á los Estados Unidos de América.

ARTÍCULO II.

En lo de adelante, para los trabajos relativos á la línea divisoria, en toda la parte de los ríos Bravo y Colorado que sirve de límite entre las dos naciones, la Comisión Internacional se regirá por el principio de eliminación de los bancos, establecida en el artículo anterior. Quedan exceptuadas de tal principio las porciones de terreno segregadas por el cambio de cauce de dichos ríos que tengan una extensión de más de doscientas cincuenta (250) hectáreas ó una población de más de doscientas (200) almas y que no se considerarán como bancos para los efectos de este Tratado ni serán eliminadas, quedando por lo mismo, como límite en esos casos el antiguo cauce del río.

ARTÍCULO III.

Tanto respecto de los bancos que en adelante se formen como respecto de los ya formados, pero que aun no están medidos, la Comisión de Límites se trasladará al lugar donde se hubieren producido, para la debida aplicación de los artículos I y II de la presente Convención, levantándose los planos correspondientes, en que se señalarán los cambios ocurridos, de una manera análoga á la empleada en los planos formados con motivo de los expresados cincuenta y ocho (58) bancos.

En lo tocante á éstos, á los bancos ya formados y no medidos y á los que en adelante se formen, la Comisión marcará en el terreno, con monumentos adecuados, el cauce abandonado por el río, de manera que los linderos del banco queden perfectamente definidos.

En todo terreno segregado en que los aluviones sucesivos han hecho desaparecer las partes del canal abandonado, adyacentes al río, cada uno de los extremos de dicho canal se unirá por medio de una línea erecta al punto más inmediato de la margen del mismo río.

ARTÍCULO IV.

Los nacionales de cualquiera de los dos países contratantes que en virtud de las estipulaciones de esta Convención queden para lo

futuro en terreno de la otra, podrán permanecer en él ó trasladarse en cualquier tiempo á donde mejor les convenga y conservar en dicho territorio los bienes que posean, ó bien enajenarlos. Los que prefieran permanecer en los bancos eliminados, podrán conservar el título y los derechos de nacionales del país á que antes pertenecían dichos bancos ó adquirir la nacionalidad de aquel á que van á pertenecer en lo de adelante.

Las propiedades de todo género existentes en los referidos bancos serán respetadas inviolablemente y sus actuales dueños, sus herederos y los que en lo sucesivo adquieran legalmente esas propiedades, disfrutarán respecto de ellas tan amplias garantías como si perteneciesen á nacionales del país donde están situadas.

ARTÍCULO V.

Esta Convención se ratificará por las dos Altas Partes Contratantes, de conformidad con sus respectivas Constituciones y las ratificaciones se canjearán en Washington tan pronto como sea posible.

En fe de lo cual, nosotros los infrascritos, en virtud de nuestros respectivos poderes, hemos firmado la presente Convención en los idiomas inglés y español y la hemos sellado con nuestros sellos.

Hecho por duplicado en la Ciudad de Washington el 20 de Marzo de mil novecientos cinco.

ALVEY A. ADEE. [SEAL.]
M. DE AZPÍROZ. [SEAL.]

PROTOCOLO.

Los Plenipotenciarios de los Estados Unidos y México, que firmaron el 20 de Marzo de 1905 el tratado para la eliminación de bancos en el Rio Bravo, habiendo omitido involuntariamente firmar los mapas que se mencionan en el Artículo I de dicho tratado, y que formaron parte del expresado documento, hoy se reunieron los infrascritos Plenipotenciarios y firmaron los mapas arriba mencionados, de conformidad con la autorización que les confirieron sus respectivos Gobiernos.

EN TESTIMONIO DE LO CUAL, han firmado este Protocolo y han fijado sus sellos á este documento.

HECHO en Washington el dia catorce de Noviembre de mil novecientos cinco.

JOSÉ F. GODOY. [SEAL.]
ALVEY A. ADEE. [SEAL.]

RULES AND REGULATIONS OF THE INTERNATIONAL BOUNDARY COMMISSION, BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES, ORGANIZED UNDER THE CONVENTION OF MARCH 1ST, 1889, AS REQUIRED BY ARTICLES VI AND VII OF THAT CONVENTION.

ARTICLE I.

Neither the Engineers nor the Secretaries shall have the right to vote on any question at issue, but the Engineers, when requested by their respective Commissioners, shall furnish any information or report, either verbally or in writing regarding any question at issue, which reports shall be recorded in the journal, either briefly or in detail. But where their reports are too extended or comprise maps and plans, they will be submitted in duplicate for filing and reference in the journal; in which case the report shall bear the number of the case to which it refers.

ARTICLE II.

The Joint Commission shall keep a journal of all its proceedings in duplicate (one copy for each Commission), each copy in both English and Spanish, and the proceedings of each meeting or session shall be duly signed by both Commissioners and attested by their Secretaries, each Secretary keeping one of the two journals.

ARTICLE III.

The record shall embrace everything material that occurs at each meeting.

ARTICLE IV.

The final decision in each case shall be made in duplicate and in both languages, duly signed by both Commissioners and attested by their Secretaries, one copy to be forwarded to each Government within three days after signing.

ARTICLE V.

The cases will be presented alternately by both Commissioners except when one side only has cases to submit.

ARTICLE VI.

If the examination made by the Commissioners or by the Engineers, is not considered sufficient to come to an intelligent decision,

the Commissioners may ask testimonial or documentary evidence, appointing sufficient time in each case, taking distance into consideration.

ARTICLE VII.

The testimony of witnesses shall be taken according to the laws of their respective countries.

ARTICLE VIII.

The witness may be examined not only by the Commissioner who brings him, but by the other one on all matters pertinent to the general investigation.

ARTICLE IX.

The evidence furnished by the witnesses shall be included in the journal of the day on which they are examined, briefly or in detail, if either of the Commissioners so desire, according to Article III of these regulations.

ARTICLE X.

In each case, where it shall be determined that the river has separated from the true boundary line, the two points of separation and a sufficient number of intermediate points shall be marked by suitable monuments to identify said boundary line.

ARTICLE XI.

The annotations on the maps as indicated in Article IV of the Convention of March 1st, 1889, shall be authorized by the Commissioners of both countries.

ARTICLE XII.

After approval of these regulations by both Governments, the Commissioners shall notify the proper local authorities of their respective nations, of the organization of the Commission, calling their attention to Articles IV and V of the Convention of March 1st, 1889.

Approved:

Washington, February 12, 1894.

W. Q. GRESHAM,
Secretary of State.

ADDITIONAL ARTICLE.

ARTICLE XIII. In all cases presented by either Commissioner, the original proceedings shall be taken down in the language of his country, and he shall have the right to call meetings from day to day of four hours each day, if he shall have business for that time (he to name the hour of meeting) until the business is completed, each day's proceedings to be signed before adjournment of that day; and on final completion of the case, the other Commissioner shall have three days within which time to produce the translation, on failure of which the Commissioner who presented the case may forward a single copy in the language of his country to his government for approval or disapproval.

Approved June 14th, 1898.

WILLIAM R. DAY.

REGLAMENTO DE LA COMISION INTERNACIONAL DE LÍMITES ENTRE LOS ESTADOS UNIDOS MEXICANOS Y LOS ESTADOS UNIDOS DE AMÉRICA, ORGANIZADA CONFORME A LA CONVENCION DE 1° DE MARZO DE 1889, Y FORMADO EN CUMPLIMIENTO DE LOS ARTÍCULOS VI Y VII DE DICHA CONVENCION.

ARTÍCULO I.

Ni los Ingenieros ni los Secretarios tendrán derecho de votar en ningun asunto que se discuta; pero los Ingenieros presentarán verbalmente ó por escrito, cuando sean requeridos por sus respectivos Comisionados informes ó memorias referentes á los asuntos que se discutan, y esos informes ó memorias se incorporarán en la acta, sumaria ó detalladamente. Cuando las memorias sean muy estensas ó comprendan mapas y planos, se presentarán por duplicado para archivarse y se hará mención de ellas en la acta, poniéndose á la memoria el número que corresponda al asunto á que se refiere.

ARTÍCULO II.

La Comisión Mixta llevará un libro de actas por duplicado escritas en español y en inglés, correspondiendo un ejemplar á cada Comisionado, y los procedimientos de cada reunión ó sesión serán debidamente firmados por ambos Comisionados y certificados por sus Secretarios, conservando cada Secretario uno de los dos ejemplares de las actas.

ARTÍCULO III.

La acta contendrá todo lo que fuere esencial que ocurra en cada reunión.

ARTÍCULO IV.

La resolución definitiva en cada caso se extenderá por duplicado en ambas lenguas y será debidamente firmada por ambos Comisionados y certificada por sus Secretarios debiendo enviarse una copia á cada Gobierno dentro de tres dias despues de firmada.

ARTÍCULO V.

Los asuntos se presentarán alternativamente por ambos Comisionados, exceptuando el caso en que solamente uno tenga asuntos que someter.

ARTÍCULO VI.

Si el exámen que hagan los Comisionados ó los Ingenieros no se considerare suficiente para adoptar una resolución adecuada, los Comisionados podrán pedir pruebas testimoniales ó documentales, fijando en cada caso el tiempo suficiente para lo cual tomarán en consideración la distancia.

ARTÍCULO VII.

Las declaraciones de testigos se tomarán conforme á las leyes de sus respectivos países.

ARTÍCULO VIII.

Los testigos podrán ser examinados no solo por el Comisionado que los presente, sino por el otro, sobre todos los puntos relacionados con una investigación general.

ARTÍCULO IX.

Las declaraciones de los testigos se incorporarán en la acta del dia en que fueren examinados, suscinta ó detalladamente, segun lo deseare cualquiera de los Comisionados, conforme al artículo III de este Reglamento.'

ARTÍCULO X.

En cada caso en que se determine que el rio se ha separado de la verdadera línea divisoria, se marcarán con monumentos adecuados para identificar la expresada línea los dos puntos de separación y un número suficiente de puntos intermedios.

ARTÍCULO XI.

Las anotaciones que se hagan en los mapas, conforme al artículo IV de la Convención de 1° de Marzo de 1889, serán autorizadas por los Comisionados de los dos países.

ARTÍCULO XII.

Despues de aprobado este reglamento por ambos Gobiernos los Comisionados notificarán á las autoridades locales correspondientes de sus respectivos países, la organizacion de la Comisión y llamarán su atención hácia los artículos IV y V de la Convención de 1° de Marzo de 1889.

Aprobado:

Febrero 15 de 1894.

MARISCAL.

ARTÍCULO ADICIONAL.

ARTÍCULO XIII. En todos los casos que se presenten ante la Comisión Mixta, las actas originales se redactarán en el idioma del comisionado que las presente, quien tendrá facultad de citar á junta todos los días; tales juntas durarán cuatro horas, caso de haber asunto que así lo exija; el propio comisionado fijará la hora de reunión la cual no terminará hasta dejar concluídos los negocios de que se trate; y las actas de cada día quedarán firmadas antes del aplazamiento. Una vez terminado un caso, el otro comisionado tendrá tres días dentro de los cuales presentará la traducción, y á falta de ella, el comisionado que haya presentado el caso podrá remitir un solo ejemplar en el idioma de su país á su gobierno para su resolución.

Aprobado:

Junio 28 de 1898.

ASPIROZ.

PROCEEDINGS IN CHAMIZAL CASE No. 4

BEFORE THE INTERNATIONAL BOUNDARY COMMISSION—UNITED STATES AND MEXICO

OCTOBER 29, 1895–JULY 17, 1896

LETTER OF TRANSMITTAL OF THE COMMISSIONER ON BEHALF OF THE UNITED STATES. AUGUST 4, 1896.

EL PASO, TEXAS, *August 4, 1896.*

To the Honorable, the SECRETARY OF STATE,

Washington, D. C.

SIR: I have the honor to enclose herewith the entire proceedings in the Chamizal Case, No. 4, beginning with the complaint of Pedro Y. Garcia, and terminating with the session of the Joint Commission of July 17th, finally terminating the case by a disagreement, as will be seen by the last paragraph of that journal. (Page 150 in English).

That session was of date July 17th, but the proceedings were not signed until July 27th, and to-day is the earliest date they could be forwarded, by reason that it was necessary to correct the Spanish rendition of the last paragraph in the journal of June 24th as will be explained by the enclosed letters of the United States and Mexican Commissioners, dated respectively July 31st and August 2nd.[a]

I regret very much—indeed I am ashamed of—the long and fruitless consideration of this case, which I think should have been terminated, had proper diligence been had in the premises, in a few weeks. I relied throughout on the plain common-sense of the English of Articles I and II of the Treaty of November 12th 1884, the documentary evidence produced and the truthful and unconflicting testimony of the seven witnesses examined, a majority of whom are Mexican citizens and four of whom (Shutz, page 123; Magoffin, page 125; Ochoa, page 117; and Samaniego "adding year by year" on page 151[b]) unconscious of its significance in the Treaty, used the word gradual as descriptive of the river's movements. No amount of special pleading can distort any of this evidence from their truthful significance and just interpretation in the case.

The case has now been in the hands of the Mexican Commissioner for two years and six months and the Joint Commission has had it

[a] [These letters do not appear to be material to the present matter and are therefore not printed here.—Agent's note.]

[b] [The page references have been changed to conform to the paging of this volume. Agent's note.]

under consideration for nine months to-day, examining meanwhile but seven witnesses.

I feel it my duty to suggest that under the circumstances of this disagreement that no action be had on the report of the two Commissioners, dated San Antonio, Texas, January 15th, 1895, recommending an elimination of the bancos proper, from the effect of the Treaty of November 12th, 1884, for the reason that should the Mexican Commissioner's contention in the Chamizal Case be unfortunately maintained, there will be no occasion for this modification of the Treaty suggested, because of a certainty if the river did not move in the Chamizal Case, by gradual erosion and deposit for the effects of Article I of that Treaty of 1884, certainly the formation of these bancos were not slow and gradual according to that Treaty, and hence those cases would have to be re-considered and the boundary established in the old bed of the river as surveyed by Emory and Salazar in 1852, and the formations whatever they were and the cut-offs whatever they may have been, would have no effect on the boundary.

It is proper also to state here that two United States citizens, Mr. Lowenstein, of Ysleta, and Mr. Armendaris, near Socorro, have presented claims informally to me for land on the other side of the river formed in exactly the same manner that the land opposite El Chamizal was formed, and that I have advised them that I did not think they had a claim, thinking that the Mexican Commissioner would see the futility of his case, but now I shall advise them to formally present their cases, pending the decision in the Chamizal Case.

I also feel it my duty to urge the Department in whatever way may be deemed best, to prosecute an early settlement of the Chamizal Case for several reasons. The first, it will be a precedent under which all similar cases can be quickly adjusted, and second, although the United States local authorities have held undisputed possession and jurisdiction over the land in dispute, as it has accrued for forty-two years, soon after this claim of Mexico was set up legally, which was very proper, many Mexicans, most of them claiming to be United States citizens, have taken physical possession of certain tracts of land and in some cases the local courts have issued writs of ejectment in behalf of United States owners. So far I have been able to persuade these parties not to enforce their writs, hoping that the Commission would arrive at an agreement, but now as soon as it shall become known that we have disagreed, no doubt the United States holders will demand

of the courts the enforcement of the writs of ejectment, and if the Mexicans should resist there may be bloodshed—and thus entail serious international complications, which ought to be avoided, if there is any possible method of doing so.

I forward in a separate package two maps described in the Journal of July 17th (page 129, English).

I think it proper to explain here an episode of the claims of Dougherty and Kirby, two lawyers of this place, not of the best standing in the community, recounted in the journal of May 18th, page 64 and following. By reference to the maps it will be observed that the location of the river of 1827 at the time the original Ponce grant was made about that date, is laid down. Last winter, seeing the engineers working about this location, without any authority from either the Mexican Commissioner or myself, it was asserted in the newspapers that the boundary had been established there and soon after many unscrupulous men made their claims and employed Dougherty and Kirby to present their claim to the Commissioners. To both the Commissioners and engineers these claims were perfectly absurd and although we used every patience in inviting them to our offices, explaining the maps and in every other reasonable way attempt to show them the injustice of their claims, they persisted and I understand still persist that the river ran there in 1852. We finally determined to dismiss them as we did in a joint letter, dated May 18th, and included in the journal of that day [a] (Page 68 of the proceedings in English).

For a better understanding of this case I enclose certified copy of a decision of the Supreme Court, No. 4, original, October term, 1891; State of Nebraska against the State of Iowa, and the following papers in that case:[b]

Bill in equity and cross bill, which has appended a map of the land in dispute, showing a banco identical with those we found on the lower Rio Grande and described in the printed report of the Commissioners; transcript of the record in that case; brief of complainants and abstract of the oral testimony. I also enclose copy of the Special Report of the Joint Commission on the four bancos,[c] in which, on pages nine and ten, you will find what was

[a] [See infra, p. 156, Agent's note.]

[b] [See infra, p. 1154, where this decision of the Supreme Court is printed in full.

[Inasmuch as the other papers, constituting the record are voluminous and appear to be sufficiently summarized for the purposes of this case in the decision of the Court, they are not printed. Certified copies will however be furnished the Commission if desired.]

[c] [See infra, p. 1092, Agent's note.]

said by the Commissioners, of which the Mexican Commissioner is endeavoring to construe into an assertion by the United States Commission, that no such a thing as gradual erosion and deposit was known in the upper Rio Grande. By perusing the whole report it will be readily seen that no such construction was intended. In the last paragraph, on page 12 and the first on 13, it will be seen that our decisions were suspended for the reasons therein explained.

I have the honor to be, Sir,

Very respectfully your obedient servant,

ANSON MILLS
Colonel Third Cavalry, U. S. A.,
Commissioner.

JOINT JOURNALS OF THE INTERNATIONAL BOUNDARY COMMISSION.

SAN ANTONIO, TEXAS, *October 29, 1895.*

The Joint Commission met at 9 A. M. and having no business at this point agreed to proceed immediately to El Paso, Texas, to there take up the case of "El Chamizal", No. 4.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *November 4, 1895.*

The Joint Commission met at the office of the American Commissioner at 10 A. M.

The Mexican Commissioner presented the papers in the case of "El Chamizal", No. 4 to the Joint Commission for its consideration.

The Mexican Commissioner also presented a new case to the Joint Commission called "La Isla de San Elizario", No. 10 in the series.

At 11 A. M., the Joint Commission adjourned until 10 o'clock A. M., the 6th instant.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

Citizen Jefe Politico. (Mayor):

Pedro Ygnacio Garcia, of legal age, a farmer and a resident citizen of this City, respectfully presents himself to Your Honor and begging leave of the Court says: That, in the year 1818 the then Lieutenant of Cavalry and Political Governor of Paso del Norte, granted and conveyed to Señor Ricardo Brusuelas, Twenty

Thousand squares varas (20,000 Vs. Sq.) of land, more or less, said land lying and being situate at a certain point that was at that time on this side of the Rio Bravo. That the said Señor Brusuealas in conjunction and acting with Don Felix Miranda, Mrs. Ursula Miranda and Dr. José Antonio Apodaca did sell, grant and convey to my Grandfather, Señor Don Lorenzo del Barrio in the year 1827, a certain piece, tract or parcel of land known by "El Chamizal", a house having already been built on said property. That my aforesaid Grandfather was in public and peaceable possession of the aforesaid real estate without any interruption whatever from the time that he bought the place, up to the time of his death, which event took place in the year 1865. That on the following year, viz: in 1866, October 15th, his son and executor of the estate, Mr. Antonio del Barrio, granted, deeded and conveyed to me the aforesaid property, the same being from that time on in my possession, through my legally authorized agent, Mr. José Acosta up to the year 1873, in which year, in consequence of the abrupt and sudden change of the current of the aforesaid Rio Bravo, that land in question was by that fact left on the other side of said river, or on the side of what is called to-day, El Paso, Texas. Ever since this change took place, I have not dared to occupy my aforesaid land, fearful, as I was, among other things, that some personal injury might befall me from the part of a few North Americans, who supposing this land to belong to the United States of North America, pretended to come into possession of the same and also because I was not satisfied in my own mind which of the two governments I ought to recognize as having jurisdiction over the same, in regard to the collection of taxes.

The facts to sustain my claim aforesaid are contained in the documents herein enclosed comprising three legal pages; and in order to ascertain the facts relating to the sudden change of the course of the river and the identification of the land in question, I beg that you have the testimony of the witnesses mentioned in the accompanying interrogatories taken, all of whom are resident citizens of this City, so that each in his turn be examined, and when this be done, you will please forward all the documents in the case, viz:

The petition, the papers herein transmitted, and the interrogatories and answers, to the International Boundary Commission, according to Article VIII of the Convention between Mexico and the United States, held on the first day of March, 1889, so that

said Commission may decide in conformity with the stipulations in Clauses II and III of the Convention of 1884, to which of the two nations belongs the land in question and whether or not I have any right to the aforesaid land.

It is justice that I demand.

PEDRO Y. GARCIA.

C. JUAREZ, MEXICO, *23rd January, 1894.*

DISTRICT OF BRAVOS,
MAYOR'S OFFICE (JEFATURA POLITICA) No. 371.

The Judge of Letters of this District having carried out the attestation asked for by Citizen Pedro Y. Garcia in his petition dated January 23rd last, this Office ordered as follows:

"*February 19th, 1894.*

"That the interested party be informed of the receipt of his petition of January 23rd last, that the said petition together with the documents accompanying same and the investigation held in regard to it be transmitted to the International Boundary Commission for such action as may be proper."

I have the honor to insert the above for such action as your Hon. Commission may deem proper; enclosing herewith the petition in fifteen pages, the documents in originals, an uncertified copy of same and the attestation above mentioned.

Liberty and Constitution, Ciudad Juarez,
February 26th, 1904.

JESUS O. NAJERA.

To the CHIEF OF THE MEXICAN COMMISSION,
OF THE INTERNATIONAL BOUNDARY COMMISSION,
Present.

DEPARTMENT OF STATE OF FOREIGN RELATIONS,
SECTION FOR AMERICA, ASIA, AND OCEANIA,
SPECIAL SUB-SECTION FOR BOUNDARIES,
MEXICO, *October 29th, 1894.*

On the 4th of September last, the Fiscal Attorney of the District Court of Paso del Norte, Chihuahua, instituted two investigations with the view of ascertaining the changes that had occurred in the current of the Rio Bravo from a point where the river reaches the last international post that marked the boundary between Mexico and the United States of America, to a point two leagues to the east of said City, and from the 2nd February, 1848, up to the day when said investigations were begun.

The proceedings held for that purpose were three in number, and are sent you herewith in Folios 22, 12, and 104, in conformity with the prescriptions of Articles 1 and 4 of the Convention of March 1st, 1889, to the end that you proceed, together with the Commissioner of the United States of America, agreeably with said Article 4, to the place where the changes occurred and institute such proceedings as be proper in order to be able to determine and arrive at a decision as called for by the Treaty.

I reiterate my protestations of regard.

MARISCAL.

To the COMMISSIONER OF MEXICO,
OF THE INTERNATIONAL COMMISSION OF BOUNDARIES,
WITH THE UNITED STATES OF AMERICA,
REYNOSA, TAMAULIPAS.

[One package sent under separate cover.]

[Joint Journal.]

EL PASO, TEXAS, *November 6th, 1895.*

The Joint Commission met at the office of the American Commissioner at 10 A. M., pursuant to the adjournment of the 4th instant.

The United States Commissioner then stated that he had as carefully examined all the papers in the Chamizal Case No. 4 as was practicable since their presentation to him, for the first time, at the last meeting of the Joint Commission on the 4th instant, and found them to consist of 139 pages, embracing the petition of claimant, Pedro Y. Garcia, with the evidence of a number of witnesses to fifteen questions, taken by written interrogatories, and answers before Mexican officials; and 23 deeds conveying portions of the tract of land known as "El Chamizal," and that he did not feel himself authorized to admit the proffered testimony as proper evidence in the case according to the terms of the Treaty.

The sole question before the Joint Commission, as he understands it, is the location of the boundary line and the national jurisdiction over the lands adjacent, and not one of personal title to any lands, and to simplify the case and avoid multiplicity of papers in the record and hasten an early conclusion, he is ready and willing to admit on the part of his government, that at the time of the establishment of the boundary between the two governments in 1855, by the Commissioners Emory and Salazar, as

provided in the Treaty of Guadalupe Hidalgo, the tract of land then known as "El Chamizal" was wholly within the territory and jurisdiction of Mexico; and that subsequently a portion of that tract has been passed by the action of the Rio Grande, to the United States side of the said river, and he submits that, having admitted this, the whole question before the Commission is whether or not the river in its passage moved over the land by gradual erosion from the Mexican bank and deposit on the United States Bank, as described in Article 1 of the Treaty of 1884, or by sudden avulsion, by cutting a new bed or deepening another channel than that which marked the boundary.

In the former case, the present channel of the river to be the boundary, or in the latter, the boundary to be established in the old channel though it be dry.

The American Commissioner understands that his admission covers all that the text of the first ten interrogatories indicates is intended to be proven by answers favorable to the claimant, and also all that could be established by the admission of the 23 deeds as testimony in the case, and he further states that he feels it his duty to contest all that favorable replies to the five following interrogatories, Nos. 11 to 15, inclusive, might tend to establish as favorable to the claimant, and he further claims that by the general rules of evidence, the witnesses should appear in person whenever practicable and give their testimony orally to the Joint Commission.

He therefore proposes that the Joint Commission proceed at once to the place where the change is alleged to have taken place and make the personal examination required by Article IV of the Treaty of 1889, and if necessary take any testimony and make any surveys that may be then found necessary, according to Rule VI, for our government.

The Mexican Commissioner then replied that he accepted the statements and admissions of the Commissioner of the United States, and requested that the engineers be instructed to proceed, without unnecessary delay, to make an informal sketch, so as to enable the Commissioners to identify the land in dispute.

At 11.30 the Commission adjourned, until the engineers shall have the said sketch prepared.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *December 11, 1895.*

The Consulting Engineer of the Mexican Commission having announced that he had completed the informal sketch to identify the land in dispute required in the journal of November 6th, the Joint Commission met at the office of the United States Commissioner at 11 A. M., and the Commissioners proceeded to examine said informal sketch by superposing a similar sketch, which the Consulting Engineer of the United States Commission had prepared separately meanwhile.

There was at once discovered a material discrepancy between the two sketches and this unfortunately at the most important point with reference to the subject of the alleged avulsion before the Joint Commission for consideration. The Consulting Engineer of the Mexican Commission stated that he had compiled his sketch exclusively from the original of the Mexican copy of Sheet No. 29 of the Emory and Salazar Surveys dated 1852, and the United States Consulting Engineer stated that he had compiled his sketch exclusively from a photographic copy of the United States Sheet No. 29 of the Survey of Emory and Salazar. On examination of this United States sheet, the following note that would explain the discrepancy was discovered, showing that the survey from which it was compiled was made some six months after the survey from which the Mexican sheet was compiled: "This map has been compared with the corresponding map of the Mexican Commission, and is found to represent the true boundary. The two maps agree, except in the bed of the river, which circumstance is the consequence of the two surveys being made at different periods, six months apart, during which time the river changed its bed, as it is constantly doing, but always within narrow limits."

On further examination it was discovered that this photographic copy of United States Sheet No. 29[a] presented little evidence of having been signed by either of the Commissioners Emory or Salazar, or if it had been signed the photograph gave some indications of erasure on the original, while all the other photographic copies of the preceding numbers have the signatures of the two Commissioners clearly, while the original of the Mexican Sheet No. 29,[a] in the possession of the Mexican Commissioner, showed plainly the signatures of the Joint Commissioners.

[a] [See portfolio map No. 6.—Agent's note.]

The Mexican Commissioner here stated that as the United States Sheet No. 29 did not appear to have been signed, he considered it of no legal significance or effect in the consideration of this case, and declined to give it such consideration, and insisted that the Commission proceed to make its determination of the question before them in the Chamizal Case No. 4, relying wholly upon the legally signed Mexican copy of the survey, which he then presented.

The United States Commissioner then stated that the matter of the absence of the signatures was a surprise to him, and that as there was a material difference between the two maps at the very point in question, he did not feel authorized to proceed with the Mexican map alone and ignore any significance of the United States map without some specific instructions from his government in the matter, which he would endeavor to procure at as early a date as practicable, and meanwhile suggested that the Engineers of both Commissions be directed to proceed to the Island of San Elizario, Case No. 10, and take up the extensive work of surveying that large island, as it was uncertain how much time it would take for him to procure instructions from his government regarding the delicate question of the absence of signatures from the important map.

The Mexican Commissioner then replied that he preferred not to enter into the work of surveying in the Island Case No. 10, until the surveys of this case were entirely completed and insisted that it be first determined, and proposed that the Joint Commission proceed at once to take the necessary testimony in the case with closed doors.

The United States Commissioner then replied that he doubted whether his Government would approve of such proceeding of a secret trial; that he understood it to be the custom of his Government in all cases of adjudication of rights that parties interested had the right to appear themselves or by counsel and that he felt reluctantly constrained to disagree with the proposition. It then appearing to both Commissioners that there were so many embarassing questions surrounding the immediate consideration of this case, first, in the very difficult solution of the alleged remote change in the river by avulsion, and the now, difference of opinion between the two Commissioners as to the method of taking testimony in the case, but more particularly the discovering of the unfortunate absence of the signatures of the Commissioners establishing the original boundary, to the United States map.

The United States Commissioner then stated that it was his purpose, if agreeable to the Mexican Commissioner, to proceed to Washington and lay these matters before his Government and procure at as early a date as practicable, instructions thereon, and suggested that as the Treaty was formed and entered into between the Mexican Minister now in Washington and the Secretary of State of the United States, that he would ask the Mexican Commissioner to accompany him to Washington for the purpose of consulting with the Mexican Minister there, who could probably more quickly determine the questions at issue by immediate consultation with the United States Secretary of State.

The Mexican Commissioner replied that it was indeed of great importance to elucidate the differences that exist, not only on account of the absence of signatures on the maps, but in the discrepancy of dates, and that in Washington it would be easier to investigate this matter; but as far as he was concerned he could not leave this city just now without first consulting his government, which he would do at once.

The United States Commissioner then stated that if the Mexican Commissioner would assent to the Engineers of the two Commissions proceeding to develop the survey according to both the United States and Mexican maps, giving each the same significance in their surveys and maps as the other, leaving the question of legality of the United States map in the final determination of the case, to the decision of the two governments, that he would assent to the method.

To this proposition the Mexican Commissioner gave his assent, and the Joint Engineers were so instructed.

The Joint Commission then adjourned until such subsequent period when the United States Commissioner returns from Washington.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *March 21st, 1896.*

The Joint Commission met at the office of the United States Commissioner at 4 o'clock P. M.

The United States Commissioner stated that he had received instructions from his Government regarding the United States Sheet No. 29, of the Map of the Commission of Emory and Salazar,

and also regarding the question of open or secret sessions, which he would present at the next meeting.

The Joint Commission then adjourned until Monday, March 23rd, at 11 A. M.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *March 23, 1896.*

The Joint Commission met at the office of the United States Commissioner at 11 A. M., pursuant to the adjournment of the 21st.

The United States Commissioner then presented to the Joint Commission a communication from the Secretary of State dated February 27, 1896, instructing him to abandon the United States Sheet No. 29, of the Emory and Slazraa Survey, objected to by the Mexican Commissioner in the Journal of December 11, 1895, and to rely wholly upon the Mexican copy of said map, Sheet No. 29, when presented and duly authenticated, for the determination of all cases hereafter to arise in the locality covered by it.

The United States Commissioner then requested for a better explanation and history of the case, that his instructions from the Secretary of State be embodied in the Journal of this day, to which the Mexican Commissioner assented.

DEPARTMENT OF STATE,
WASHINGTON, *February 27, 1896.*

COLONEL ANSON MILLS,
Boundary Commissioner, etc.,
Washington, D. C.

SIR: I have to acknowledge the receipt of your letter of February 8th,[a] reporting your unsuccessful endeavors to discover the cause of the erasure of the signatures from this Government's copy of Sheet No. 29 of the Emory Boundary Survey of 1856, in view of the fact that the Mexican Government's original of the same sheet is signed and exhibits some discrepancy in the demarcation of the river channel, amounting in the maximum to about one hundred and fifty yards, at a point involved in the question now before your Commission for determination.

Your conjecture that the erasure was made with a view to substitute the engraved sheet bearing fac-similes of the original signatures so erased and also two engraved views not drawn upon

[a] [General Mills' letter of the 8th of February, 1896, together with his previous letter of December 11, 1895, dealing with the question of the erased signatures, are printed infra, pages 1106, 1108, for convenient reference.—Agent's note.]

the original copy, is plausible, and the discrepancy between the said original sheet and that of record in Mexico is explicable by the manuscript note, not erased and repeated upon the engraved copy, that slight discrepancies are found during a lapse of several months between the Mexican and the American surveys.

Even were it possible to establish fully the authenticity of the mutilated manuscript copy now in our possession or of the engraved fac-simile thereof, as a record of the true boundary under the treaty, the circumstance that it varies materially as to an important part of the boundary line from the signed original which the Mexican Government is entitled to regard as the treaty record of that boundary, would still make it difficult and perhaps a matter of tedious negotiation and ultimate conventional agreement to determine which of the two discrepant charts is in fact the true boundary. As matters now stand I am inclined to think that the claim of the title of the Mexican map to be regarded as authentic and paramount can not be contested by any facts or evidence in the possession of this Government.

As the point before your Commission is not so much the location of the original boundary existing in 1856, when the Treaty survey was made, as it is to determine whether the variation in the course of the river since that time, by which the boundary as marked on either of the maps in question has been left some distance north of the present channel is due to erosion and accretion or to abrupt cutting of a new channel by avulsion, the question of the authenticity of the maps is of secondary importance, in view of the reasonable certainty now existing that the present channel, having been formed by the cutting away of the Mexican bank and corresponding accretion of the American bank at that point, constitutes the existing boundary, according to the treaty under which your Commission is operating.

The question of eliminating the "bancos" from the consideration of your Commission is still under consideration, and until some other course than that prescribed by the Convention shall be adopted by the two governments in regard to such isolated "bancos" the matter comes within the purview of the present Commission and is to be decided as each case presents itself.

I am, Sir, your obedient servant,

RICHARD OLNEY.

After an informal discussion between the two Commissioners regarding the question of open or closed sessions, mentioned in the Journal of December 11th, the Mexican Commissioner stated that he did not then mean to exclude persons interested in the cases before the Commission from introducing evidence, either in person or by counsel, but that he did desire excluded spectators and all other persons not interested in the business before the Commission.

The United States Commissioner stated that that proposition was agreeable to him, and he was willing to proceed with the consideration of future cases with that understanding.

The United States Commissioner also stated that he was ready to proceed with the consideration of the Chamizal Case whenever it was agreeable to the Mexican Commissioner.

The Joint Commission then requested the Engineers to present the sketch in the Chamizal Case, requested of them in the Journal of November 6th, 1895.

The Joint Commission then adjourned until Wednesday, March 25th, at 11 A. M.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *March 25, 1896.*

The Joint Commission met at the office of the United States Commissioner at 11 A. M., pursuant to the adjournment of the 23rd instant.

After signing the proceedings of the meeting of the 21st, the United States Commissioner stated that he would like to submit for the consideration of the Joint Commission, the report of his Engineer, submitting his informal sketch in the Chamizal Case, No. 4, requested by the Joint Commission in the Journal of November 6th, last, stating in his report that he had been unable to obtain the concurrence of the Mexican Consulting Engineer, and submitting a letter from him in explanation.

The map and letter was then submitted to the Joint Commission, with the statement that the United States Commissioner was ready to proceed with the consideration of that case at any time it would suit the pleasure of the Mexican Commissioner.

The United States Commissioner further stated that he desired to present, for the consideration of the Joint Commission, the report of his Engineer, with an informal sketch of the Island of San Elizario, Case No. 10, with the statement from his Engineer that he was unable to procure the joint signature of the Mexican Consulting Engineer to the same, and the United States Commissioner further stated that he was ready to proceed with the consideration of that case whenever it would suit the pleasure of the Mexican Commissioner.

The Mexican Commissioner then stated that he understands that the Mexican sketch is ready for the consideration of the Joint

Commission in the Chamizal Case, No. 4, but that his Consulting Engineer says that he could not sign the sketch of the United States Engineer, on account of small discrepancies between the amplifications taken by Mr. P. D. Cunningham, United States Assistant Engineer, of the Salazar map of 1853, and that made by the Mexican Engineers, and that such discrepancies will probably be reconciled on the arrival of the official map now in Mexico.

The Joint Commission then adjourned until the receipt of the Mexican Map, Sheet No. 29, from the City of Mexico.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[United States Engineer's Report.]

EL PASO, TEXAS, *March 25, 1896.*

TO COLONEL ANSON MILLS,
Commissioner,
El Paso, Texas.

DEAR SIR: In compliance with your request of November 6th, 1895, and contained in the Joint Journal of that date, I have the honor to submit herewith an informal map of Chamizal Case No. 4, showing part of the cities of El Paso, Texas, and Ciudad Juarez, Mexico, the river between the two cities as it was at the time of our survey in December, 1895, and as it is shown on the Emory and Salazar Maps of the Boundary Commission in 1853.

Colonel Corella, the Consulting Engineer for Mexico, has declined to sign this map, and explains why, in his letter to me of the 24th of this month, which please find enclosed with this.

Respectfully, yours,

F. B. DABNEY,
Consulting Engineer.

CIUDAD JUAREZ, *March 24, 1896.*

MR. DABNEY:

The official map of Salazar, etc., was requested from the City of Mexico on the 22nd instant. As soon as we may have it here, you and I will make an amplification of $\frac{1}{1000}$.

With this amplification, thus obtained, we will make the comparison with the present topography, and in this way we will definitely mark the river of 1853.

When the river of that date, is once located (the only discrepancy in the preliminary sketches we prepared in January), there will be no difference whatever.

Under such circumstances we will sign the map, which will be the International one in the Chamizal Case.

I remain, yours, very respectfully,

EMILIANO CORELLA.

1857 to 1868 I know of several changes that have taken place in the river.

Q. When was the first noticeable change in the river from 1852?—A. From 1858 to 1860 there were some small changes; the largest change took place in 1864, when the dam was destroyed, but from 1864 to 1868 there were slight changes.

Q. Did the change take place in 1864 or later on?—A. The principal change was in 1864, but since then the changes have been small.

Q. From 1868 to this date has the river made any noticeable change?—A. It has made small changes.

Q. Explain how you know what you have stated.—A. In the first place because from 1858 to 1862 I was Jefe Politico of this city, and during that time I had official duties on the dam and river, and in the second place I have always resided here, and being a land owner, I have been constantly on the watch and have lost some property myself.

Q. When the change took place was it slow or violent?—A. As I said before it was sometimes slow and sometimes violent, and with such force that the noise of the banks falling seemed like the boom of cannon, and it was frightful.

The Mexican Commissioner here stated that he had no further questions to ask this witness, and the United States Commissioner asked the following questions of the witness:

Q. How broad was the river bed when it was full of water during these years the changes were going on?—A. When the river was very high, I think it was sometimes five hundred yards more or less.

Q. When it was very low, how wide was it?—A. Only about five yards.

Q. During the time these changes were being made that you speak of, was the principal current generally near the Mexican shore or near the United States shore, in the vicinity of what was then the ferry or now the Santa Fé Street Railway bridge?—A. From the point near the Mexican Central Railway bridge, six hundred yards above, more or less; the current was close to the Mexican side, as a rule. From that place down the channel changes from one side to the other, as I have already stated; always within the river bed.

Q. You have stated that when these violent changes were taking place that often large banks of the river would fall into the water with a report like a cannon. Now, about the opposite bank; what was going on there?—A. The sand that the river was carrying was deposited on the opposite side and formed sand bars.

The questions and answers were then read to the witness and found to be correct.

The third witness, E. Provencio, was then duly sworn by the Mexican Commissioner, he being a citizen of Mexico, and the fol-

lowing are the questions propounded by the Mexican Commissioner and the answers thereto:

Q. State your name, age, residence, and occupation.—A. E. Provencio; 48 years of age; I live here; landowner.

Q. Have you resided here since 1852?—A. Yes, sir.

Q. From 1852 to now have you noticed any change in the river?—A. I have no recollection, except from 1860 to this date.

Q. When was the first noticeable change in the river since 1852?—A. About the year 1864.

Q. Did the change take place in 1864 or later on?—A. It began in 1864.

Q. From 1868 to this date has the river made any noticeable change?—A. Very slight changes have taken place since then.

Q. Explain how you know what you have stated.—A. Because the violent changes of the river in 1864 caused considerable alarm to the city, and the people went to the banks of the river and pulled down trees and tried to check the advance of the waters. I was there sometimes to help and sometimes simply to observe. I helped to take out furniture from houses in danger and to remove beams of houses, etc.

Q. When the change took place, was it slow or violent?—A. I can not appreciate what is meant by slow or violent, but sometimes as much as fifty yards would be washed away at certain points in a day.

The Mexican Commissioner here stated that he had no more questions to ask the witness at present, and the United States Commissioner also stated that he did not care to cross-examine the witness at present.

The questions and answers were then read to the witness and found by him to be correct.

The Mexican Commissioner suggested that the Joint Commission request the Consulting Engineers to furnish a written technical report and map, if necessary, as detailed as possible, showing the scientific grounds that may be, for a decision as to whether the change in the river from its course in the year 1852, when the Emory and Salazar surveys were made, to its actual present course, is due to an avulsion or to slow and gradual erosion; said report to include all data available and landmarks to be found on the disputed ground, such as trees, old banks, and all others deemed of interest.

The Joint Commission then requested the two Consulting Engineers to proceed as requested, and adjourned to meet tomorrow, the 15th instant, at 10 A. M., at the office of the United States Commissioner.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *April 16, 1896.*

The Joint Commission met at the office of the United States Commissioner at 10 A. M., the United States Commissioner having requested that the meeting scheduled to take place yesterday be delayed until to-day, to enable him to have his witnesses present.

The United States Commissioner then stated that he had received notice from the Secretary of State that the Commission would take up the investigation of the international dam at El Paso, but that work on that subject should be subordinate to the expeditious conduct of the Treaty work of the Commission.

The United States Commissioner then introduced three witnesses, Messrs. José M. Flores, a citizen of Mexico: Samuel Schutz and Joseph Magoffin, American citizens.

The Joint Commission then explained to the witnesses an informal sketch, No. 1,[a] prepared by their engineers on tracing linen, where the red lines represent the river as located by the Salazar survey, in 1853, and the black lines the present location of the river; on which is also represented the Santa Fé depot, the smelter, and other objects familiar to residents.

Beneath which sketch is another marked No. 2,[b] representing the City of El Paso, with streets and other objects plainly marked thereon, and a portion of the City of Juarez, Mexico. By pressing the upper sheet on the lower one the relative position of objects on each will be plainly observed. The land between the two locations of the river is that in dispute. In giving testimony witnesses are requested to refer to objects thus represented when practicable.

The first witness, José M. Flores, was then duly sworn by the Mexican Commissioner, and the following are the questions propounded by the United States Commissioner and the answers thereto:

Q. State your name, age, residence, and occupation.—A. José M. Flores; 63 years of age; I reside in Juarez, Mexico; merchant.

Q. Please state when you first came to this locality, and whether or not you have resided here continuously since, specifying the years you were absent, if any.—A. I came to this country in 1852; I was here up to the latter part of 1854, and then went to San Antonio; came back in 1855, and have been here ever since.

---

[a] [Now portfolio Map No. 5. Agent's Note.]

[b] [Now Hand Map No. 1. Agent's Note.]

Q. Please state your opportunity for knowing the Rio Grande and its characteristics and habits?—A. By crossing and living close by the river on each side. I lived on this side in 1861 and had my store here in this town, and then I had it below, also on this side, and I crossed the river at least every 15 days.

Q. How did you cross the river for the first 25 years of your residence here; what methods had you of crossing the river?—A. Horseback, carriages, and in high water we crossed it in canoes.

Q. Please explain on the map about where the ferry was in crossing by canoes.—A. The ferry moved as the channel of the river moves. In 1861 or 1862 I recollect that the canoes were right where the trees are, opposite the Santa Fé depot.

Q. Which side of the river were those trees on?—A. On the United States side.

Q. Whereabouts was the ford where you crossed with wagons, etc.?—A. That changed as the river changed; the Ponce crossing was where the lower bridge is. They had two crossings as they have now; one where the upper bridge is and the other where the lower bridge is.

Q. You speak of the river changing. How did it make these different changes you speak of?—A. As I understand it, it was by corrosion; in time of high water it changed by corrosion.

Q. Were these changes gradual; that is, every year more, or less?—A. Some years it had no effect. There was not enough water to make a change, and some years it would change considerably, according to the stage of the water.

Q. Did you ever know the river to abandon its bed and break out a new one through the lands in Mexico, at this point?—A. No, sir.

Q. These changes, then, were all made by the tearing away of the Mexican bank, and the depositing on the United States bank of alluvium?—A. Yes, sir.

Q. Which bank of the river was the highest?—A. Always, the Mexican.

Q. Did you ever know the Mexican bank to overflow in time of high water?—A. No, sir.

Q. Did the United States bank overflow in time of high water?—A. Yes, sir.

Q. When these high waters receded from the United States bank, was there evidence of increase of that bank by deposits of sand and alluvium?—A. Yes, sir. As the river moved toward Mexico it was leaving land in the United States.

Q. In the changes of the river that were made in the way you have described, did you ever know land that you had seen prior to the flood on the Mexican side to appear on the American side with anything to distinguish it; trees, houses, etc.?—A. No, there never was left anything that I could recognize as the original land.

Q. While these sandbars were forming under water on the United States side, could you see the operation with the naked

eye; could you see them forming?—A. No, sir; you can not see them forming.

Q. They were only visible after the water had disappeared?—A. Yes, sir.

Q. About how wide was the average width of the river, from bank to bank, at the ford and ferry during these many changes in all this period?—A. The river did not leave any bank on the American side, and spread as the water rose.

Q. When the violence of the current destroyed the lands on the Mexican side, and precipitated the earth into the river, what became of this earth?—A. It went down into the water; I do not know where.

Q. Did you ever know any sudden change of the principal part of the current of the river outside the Mexican bank to the south?—A. No, sir.

The United States Commissioner then stated that he had no further questions to ask the witness at present.

The Mexican Commissioner then asked the following questions:

Q. Has the river changed from 1852 to 1864?—A. If it did change it did not change much; imperceptibly.

Q. Do you remember if there was a great flood; the greatest known, in 1862?—A. Yes, sir.

Q. Then you say that notwithstanding that flood the river did not change in 1862?—A. Notwithstanding the great flood it did not change.

Q. Did the current come with such violence between 1864 and 1868 that houses and fields were destroyed?—A. Yes, sir.

Q. Did the river in 1868 have its actual course where it is marked in black now where the bridges are, more or less?—A. I can not answer this question.

Q. From 1864 to the present time at what time did the river change?—A. It changed from 1864 or 1865 to 1882.

The United States Commissioner then asked the witness the following questions:

Q. Please describe the manner of the tearing away of the Mexican bank by the current when these changes were taking place?—A. The current carried the sand from the bank and cut in under and then these pieces fell into the water. If the bank was very high it took larger pieces; say two yards, never more than three yards wide, and where the banks were low, it took smaller pieces.

The Mexican Commissioner then asked the following question:

Q. For what reason do you think that from 1852 to 1864 the river did not change perceptibly?—A. Owing to defences on the Mexican side that were destroyed when the river destroyed the dam; it changed more after 1864.

The questions and answers were then read to the witness and found by him to be correct.

The second witness on behalf of the United States, Mr. Samuel Schutz, an American citizen, was then duly sworn by the Commissioner for the United States, and the following are his questions and answers; the United States Commissioner asking the questions:

Q. State your name, age, residence, and occupation.—A. Samuel Schutz; 67 years of age; El Paso, Texas; merchant.

Q. Please state when you first came to this city, and whether or not you have resided here continuously since, specifying the years you were absent if any.—A. I arrived here in 1859; left in 1865 and went to Europe and stayed a year, and then resided here until 1873, when I left, and returned in 1883; and have lived here ever since.

Q. Please state your opportunity for knowing the Rio Grande, its characteristics, and its habits?—A. By crossing various times during the month; that is, two or three times, and observing the changes in the river.

Q. It has been admitted that the river has changed from its location, as indicated by the red lines on the map, to its location as indicated by the black lines, between the year 1853 and the present date. Please state what you know about those changes and how they came about?—A. From the time I came here it made changes, but they were very small at the start, mostly every year from 1859–60–61–62, and '63. It changed opposite the city here a little, but more so a little below here, until up to 1864; we had a big flood then and rise in the river, and it worked more on the Mexican side, and undermined the banks more than in any previous year since I lived here in El Paso.

Q. In all the years you have lived here have you ever known the river in its movements South to abandon the channel it then occupied and open up a new one on the lands in Mexico?—A. No, sir.

Q. How did you cross the river in going back and forth to Mexico?—A. Horseback, carriages, and boats or canoes.

Q. When going by boat you went afoot?—A. Generally, but sometimes we took a horse or a carriage and left it on this side until we came back.

Q. In any of these journeys did you ever discover an abandoned river bed on the United States side?—A. No, sir.

Q. Which bank was the highest?—A. The other side, the Mexican one.

Q. Did it ever overflow?—A. Not to my knowledge.

Q. Did the banks of the United States side overflow?—A. Continually during high water.

Q. After the bank on the United States side had been overflown and the waters had receded did you notice accretions or additions to the American bank by sandbars or deposits of alluvium?—A. Yes, sir, I did.

Q. These sandbars were formed under water, were they not?--A. Yes, sir.

Q. While they were forming, were they visible?—A. No, sir.

Q. They were visible after the water had receded?—A. Yes, sir.

Q. In all the changes that the river has made moving South have you ever observed any objects, houses, trees, or land left on the American side that you formerly recognized as being on the Mexican side?—A. No, sir.

Q. Where was the deepest channel in the river generally?—A. Closest to the Mexican side.

Q. Please describe how the Mexican bank was destroyed by the violence of the water.—A. The best illustration I can give is to consider a lot of laborers working on a sandbank and undermining by picks and shovels, etc., enough gravel or sand to make the upper bank too heavy, and give away and fall into the river.

Q. You have often seen these banks falling into the river, have you not?—A. Yes, sir.

Q. What became of them?—A. Washed away; the best that I could see.

Q. Do you know when the jetties were built by the Mexicans on the other side?—A. Yes, sir.

Q. About when?—A. To the best of my recollection after 1868 or 1870; I can not say exactly what year.

Q. Do you know what they were built for?—A. To protect the banks of the river.

Q. Against what?—A. Against floods taking away the land.

Q. When you first came here, whereabouts with reference to the Santa Fé depot was the ferry-boat landing on this side?—A. I recollect once I came over and landed close in the neighborhood not more than 300 feet from where the opera house is now.

Q. When the United States bank was overflown, the water covering it was comparatively still, was it not?—A. Yes, sir.

Q. And during the flood, deposited a great deal of alluvium?—A. To the best of my knowledge, yes, sir.

Q. In this way, the sandbars that were formerly drifting sand have been somewhat covered up by the many floods, have they not?—A. Yes, sir.

Q. Then again the drifting sand from the North West wind has deposited a great deal of earth on top of these former sandbars, has it not?—A. The sand has a natural drift in certain places where it deposits.

The United States Commissioner here stated that he had no further questions to ask the witness at present.

The Mexican Commissioner then asked the following questions of the witness:

Q. Have you the technical knowledge of the words alluvium, erosion, and avulsion, and can you explain technically the changes in the river?

To this question the United States Commissioner stated that he had not introduced the witness as an expert, and had avoided, as far as practicable, using any technical expressions in questioning the witnesses. He does not remember to have used the words avulsion or erosion or asked the witnesses any questions pertaining to any scientific question.

A. I do not know the meaning of the words and I have not the technical knowledge.

Q. Has the river changed from 1852 to 1864?—A. As I stated before, it changed every year a little, gradually, but not of any consequence that you could see a tremendous change.

Q. Do you remember if there was a great flood, the greatest ever known, in 1862?—A. I consider the 1868 flood was greater or the equal of 1862.

Q. Did the current come with such violence between 1864 and 1868 that houses and fields were destroyed?—A. Yes, sir.

Q. Did the river in 1868 have its actual course where it is marked in black now. Where the bridges are, more or less?—A. I was not here then.

Q. From 1864 to the present date at what times did the river change?—A. I was not here. I was absent from 1873 to 1883.

Q. When you went away in 1873 was the river as it is now?—A. I can not say.

The questions and answers were then read to the witness and found by him to be correct.

The third witness, Joseph Magoffin, a citizen of the United States was then duly sworn by the United States Commissioner and the following are the questions propounded to him by the United States Commissioner and his answers thereto:

Q. State your name, age, residence, and occupation?—A. Joseph Magoffin; 59 years of age; El Paso, Texas; banker.

Q. Please state when you first came to this locality.—A. I came here in 1844.

Q. Have you resided here continuously since?—A. I went to the States to school and returned in 1856.

Q. Have you been absent any since that date?—A. I returned in 1856 and lived here until July 1862 and returned again in 1868. I have been here ever since except when absent on small trips.

Q. Please state your opportunity for knowing the Rio Grande; its characteristics and habits.—A. I have had as much to do with the river here, almost as our friends across the river have, in trying to keep it from washing away Fort Bliss, which was my Father's former home.

Q. Fort Bliss is below the City of El Paso where the river makes a return and comes into the American side is it not?—A. Yes, sir.

Q. It has been admitted by both the Commissioners that since 1852 when the Boundary was established where the red lines are

on the map, the river has changed to where it is represented now by the black lines on the map. Please state what you know concerning this change or these changes; how they were made and when as near as practicable?—A. In 1856 when I came here I met Captain Dodge stationed at Fort Bliss, who stated to me that there was a flood in the river and told me to tell my Father, who was then absent from home, that the river had made a change in front of El Paso or Franklin as it was then called, and if he did not watch out, it would wash away Fort Bliss. This was in 1856. Since that time to the time I left here in 1862 the river has made a gradual change immediately in front of Ketelsen and Degetau's store, and it made a larger change down, East, below there, always to the Mexican side. From Ketelsen and Degetau's to the dam it has always been strongly fortified by what was called then tenates which were large baskets of willow filled with stone and fortified from fifty to one hundred and fifty yards. Mr. Velarde made them and I was present and watched them from time to time as I was interested in seeing that the river did not go that way myself. These tenates, though they were well made and fortified the river would occasionally wash away and the water would go in behind them and wash away the banks of the river and leave the tenates on the United States side of the river. Now if it washed away say 50 yards anywhere from Ketelsen and Degetau's up the river, it would wash away probably 200 yards in the lower part. The river was trying to work into Mexico all the time; its natural course is that way. This damage to the Mexican side of the river caused by the washing away of the banks from Ketelsen and Degetau's down to opposite the smelter, caused the river to turn and come directly towards old Fort Bliss, my Father's place. We had there 20 wagons working from two to three months at a time to try and keep the river from washing away the Post. The banks on the South or Mexican side of the river were as a rule from ten to twenty feet high down here at Chamizal. They are all gone now or nearly so and all this accretion to the United States has been by the washing away of the banks and the banks falling into the river. It continued to wash away, as I said before up to 1862 when I left and went into the Southern Army. I crossed my Mother over the river myself in a skiff and left her over there. The river was very high and I could hardly get across. When I returned in 1868 the river was about midway between Ketelsen and Degetaus and its present bed, a little more or less. It has been gradually going South until it was stopped by the works of Mr. Garfias which were put there soon after the Street Railway bridges were made, which I think was in 1882, and I think Mr. Garfias commenced his work about 1885. It has been a constant source of annoyance and peril to the City of Juarez as it has been to my place below here.

Q. In the case of Juarez, the damage was done to the Mexican bank was it not?—A. Yes, sir.

Q. But in the case of Fort Bliss two miles below, the damage was done by gradual encroachments on the United States bank was it not?—A. Yes, sir.

Q. Which had the greatest loss in area; the loss of the Mexicans at Juarezs or the loss of the people of the United States at old Fort Bliss?—A. I should judge about the same.

Q. And both these changes made by the river, one to the South and the other to the North, were always gradual year by year by erosion on one side and deposit on the other?—A. Yes, sir.

Q. When the river was high and cutting in the bank either at Juarez on the Mexican side or at Fort Bliss on the American shore, you could see the banks caving in, could you not?—A. Yes, sir.

Q. But on the contrary opposite Juarez on the United States shore and opposite Fort Bliss on the Mexican shore, during high water these shores were being increased by deposits of sand and alluvium were they not?—A. Yes, sir; it was gradual on both sides.

Q. Now when these deposits were being made during high water could you see the operation with the naked eye?—A. No, sir; they were all under water until the river fell.

Q. After the water receded could you see the additions that had been made to the overflown banks both opposite Juarez and Fort Bliss, one in Mexico and the other in the United States?—A. Yes, sir.

Q. During all these years of your residence here you often crossed the river near Juarez, did you not?—A. Yes, sir.

Q. How often?—A. Well I was off and on every few days.

Q. In the first 25 years of your residence how did you cross?—A. We crossed on horseback, carriages, and flat-boat.

Q. In your journeys to and fro did you ever observe an abandoned channel on the United States side of the river?—A. Well there was occasionally when the last bed of the river that had been left, a little water running through there until the following year when that would join the other again and fill up.

Q. But this was all between the two principal banks and through the sand?—A. Yes, sir.

Q. When the river made its frequent changes did you ever observe anything left on this side that you recognized as having seen on the other side?—A. No, sir, everything was washed into the river.

Q. Which bank was the highest?—A. The Mexican bank.

Q. Did it ever overflow?—A. Never, to my knowledge.

Q. Did the United States bank ever overflow?—A. Yes, sir.

Q. Where was the deepest channel near Juarez?—A. Right on the edge of the bank of the river. The South bank.

The United States Commissioner here stated that he had no further questions to ask the witness at present.

The Mexican Commissioner then asked the following questions of the witness:

Q. From 1856 to 1882 has the river bed been changing year by year?—A. Yes, sir; it has been changing to the South whenever there was high water.

Q. You say it changed year by year. Did the river abandon its primitive bed?—A. Yes, as I said before, in large floods there would probably be two river beds running side by side but it would gradually be going South all the time.

Q. Were you here during the great floods of 1864 to 1868?—A. No, sir; I was not here.

The United States Commissioner then asked the following questions of the witness:

Q. When you say there were two river beds running side by side after a great flood, do you mean that these were actually separate river beds or simply currents running in the sand between the two principal banks?—A. The river immediately here in front of Juaraz where it left its old bed or the one on the North side of the bank, from the erosion of the river into the Mexican side would contain some water. There would be two branches of the river really running probably four or five hundred yards before they went into the same river again. Then again there would be but one.

Q. Was there any soil between these two streams or was it wholly made of sand deposit by the flood?—A. There was nothing but alluvial soil left by the river.

Q. And when the river was quite low there were two streams?—A. When it was reasonably high and when it was low there would only be one stream and that on the South bank.

Q. That is the case at present is it not?—A. Yes, sir; the same thing exists to-day.

Q. Below the railroad bridge and under the lower street car bridge the river is now separated into two small branches is it not?—A. Yes, sir.

Q. Do you consider that there are two river beds there?—A. No; there are not two river beds but a branch of the old river which is practically a part of the old river.

Q. The whole river as it runs now is embraced between the American and Mexican banks proper is it not?—A. Yes, sir.

The Mexican Commissioner then asked the following questions of the witness:

Q. Can you explain technically what the river bed is?—A. No, sir.

The United States Commissioner then stated that he had not introduced the witness as an expert.

The United States Commissioner then asked the witness the following questions:

Q. When you spoke of there being two streams in the river, it was the same as exists now; all contained between the two principal banks, Mexican and American?—A. Yes, sir; simply currents wandering about in the sand and immediately in the vicinity of each other and between the American and Mexican banks.

The Mexican Commissioner then asked the witness the following questions:

Q. From 1856 to 1862 did the river abandon its bed?—A. It left the old bed and gradually moved towards Mexico.

Q. During that period did the channel as represented by the red lines, remain dry?—A. Certainly it did; it is dry to-day.

Q. During that period of time could that bed be seen with the naked eye?—A. Only after the river receded.

Q. When the river receded could that channel be seen?—A. Only from year to year. It would fill up as it was going South.

The United States Commissioner then asked the following question of the witness:

Q. Was there ever a time when you could distinguish two distinct river beds each having two distinct banks, one carrying water and the other not?—A. No, sir.

The questions and answers were then read to the witness and found correct.

The Mexican Commissioners stated that he had asked the witnesses if they knew the meaning of the words avulsion, erosion, and alluvium to see if they knew technically the meaning of the words.

The Joint Commission then, at 2.30 P. M., adjourned to meet Saturday the 18th instant, at the office of the Mexican Commissioner.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

CIUDAD JUAREZ, MEXICO, *April 18, 1896.*

The Joint Commission met at the office of the Mexican Commissioner at 10 A. M., pursuant to the adjournment of the 16th instant.

Mr. Ynocente Ochoa, a witness presented by the Mexican Commissioner, having been previously sworn, was further examined by the United States Commissioner.

Q. Mr. Ochoa, you spoke in your testimony on the 14th instant of the pieces of earth falling into the waters of the river from the

Mexican bank, making a loud noise. To do so they must have been of considerable size. Please state approximately in feet about the largest in length, breadth, and depth you have noticed.—A. Sometimes the bank was higher above the water than at other times, and according to that would be the depth of the pieces falling in. About from one to three yards, more or less, wide and about from one to three or four yards long.

Q. About how far did these banks stand above the surface of the water?—A. In some places the bank was probably half a yard; in other places they were not over three yards.

Q. What became of these pieces of earth when they fell into the river?—A. It is very hard for me to say or explain. It went into the water. The bank contains two kinds of earth, black clay and sand. I suppose both were carried away by the water.

Q. For all you know they were carried down the river, possibly a mile or ten miles, their particles lodging on either bank?—A. I can not say.

Q. You say the bank was made up of two kinds of soil, clay and sand. Which was above, the clay or the sand?—A. The clay; the sand is always on the bottom of the bank of this river.

Q. Is it quicksand?—A. I do not know what you call quicksand. It is a pure white sand.

Q. This sand is first eaten out from under the clay by the current, causing the clay to fall in, is it not?—A. The water excavates the sand from under the clay and then the clay falls in.

Q. About how deep is the water generally next to the bank when it is eating out the sand?—A. I am unable to say.

Q. Did you ever know the river to overflow the Mexican bank opposite the Santa Fé depot?—A. Not there; but I have once seen it overflow about one mile below. I have also seen it overflow several times at the land called Molino de Cordova.

Q. Now about the American bank. What was the character of that bank in the vicinity of the Santa Fé depot?—A. The most of the bank from about half a mile above the Santa Fé depot down below about three miles was sand bars that the river left.

Q. You have had a great deal of experience crossing the river in these past thirty or forty years, have you not?—A. I have since 1858.

Q. How did you cross?—A. I crossed the river on horseback, in carriages, in ferry boats, and on foot.

Q. In 1858, when you first began crossing by the ferry-boats, where was the landing on the American side?—A. I can not tell.

Q. Can you describe about where the American bank was somewhere near the Sante Fé depot in 1858?—A. I think the bank was close to where Ketelsen and Degetaus house now is, more or less.

Q. How near was it to the Sante Fé depot, more or less?—A. I can not say, exactly.

Q. Do you remember a line of trees South of the Sante Fé depot?—A. I recollect seeing some trees there, but I do not know if they are the same you refer to.

Q. Did the river run near to those trees at that time?—A. Somewhere close, I think.

Q. Do you remember to have testified, two years ago, that the river ran near those trees in 1858; the trees were then, two years ago, still existing?—A. I am not sure that those are the trees I referred to two years ago. I suppose they are, but I am not sure.

Q. If they are not the same trees that you refer to, could you kindly go with us and point out those you did refer to?—A. I can go, if necessary. I do not know that I can recognize them.

Q. They are the only large trees in that vicinity, and it is very important to the just issue of this case that they be identified. Mr. José M. Flores has testified that he recognized them as standing on the American bank about 1868, and I would like to have you either confirm the testimony you gave two years, ago or discover other trees that you may have referred to in that testimony.

Mr. Ochoa here stated that he desired to visit the locality and examine the trees with Mr. José M. Flores, and defer answer to this question until after this examination.

Q. Now, Mr. Ochoa, in your frequent crossings of the river during the first 25 years of your residence here did you ever observe two independent channels of the river, each having two independent banks, one carrying water and the other none?—A. No independent banks, but in the same bed of the river there were sometimes two channels, as there are now.

Q. When the destruction of the Mexican bank was going on at various times you have stated, where was the deepest channel, near the Mexican bank or otherwise?—A. When the destruction of the bank on the Mexican side was going on as a general rule, the larger body of the water was next to that bank.

Q. In his testimony Mr. Magoffin spoke of the Mexicans defending the bank, sometime in the '60's and at other times, with what he called tenates. Do you know anything about that?—A. Yes, sir.

Q. Will you please describe this kind of defenses, and about when they were used and how often?—A. A long basket, made of brush and filled with rocks, laid down at the edge of the bank they were trying to defend. Sometimes they also made defenses of large logs and some logs driven into the ground and braced and then filled in with brush and rocks. I do not recollect when they were used, but they generally did that whenever the bank of the river was in danger of being washed away.

Q. Did you ever know any to be used before 1864?—A. Yes, sir; I know of some being used.

Q. Do you ever remember of any being used after 1868?—A. There were some used more or less from time to time whenever the bank was in danger of being washed away.

Q. I think you stated in your former testimony that there were slight changes before 1864 and slight changes after 1868?—A. Yes, sir; there has been.

Q. Do you mean by that, that the whole of the changes during these periods were slight or that each one of the many changes was slight in itself?—A. I mean that each change was slight in itself.

Q. When were the defenses known as the Garfias Jetties built and by whom?—A. They were commenced about 1885. The Mexican Government built them.

Q. Do you know why they were built?—A. To prevent the river from washing away the town.

Q. Have they prevented it up to this date?—A. Yes, sir.

Q. Taking the whole character of the changes of the river during the long years you have seen it going on, do you not consider it a gradual one, as a whole?—A. As I do not understand International Laws, I can not say.

Q. Have you ever known the current of the river to break through the Mexican bank and form a new and separate channel and river bed in the vicinity of Juarez?—A. No; I do not recollect having ever seen it.

Q. Have you known the river to do so in other places?—A. Yes, sir; I think the river did that opposite Tres Jacales.

Q. In 1864, when the floods of the river here were destroying the bank at Juarez, have you any knowledge of what it was doing down at old Fort Bliss two miles below here?—A. It once washed away a part of the old fort.

Q. The action of the current in destroying the American bank at Fort Bliss was similar to its action here in destroying the bank at Juarez, was it not?—A. Something like; only the bank at old Fort Bliss was much lower than on the Mexican side.

Q. And as the bank was destroyed on the American side at Fort Bliss, what happened on the Mexican side opposite Fort Bliss?—A. It left sand bars, the same as the river did here when it destroyed the bank at Juarez. They also made defenses at the time at old Fort Bliss in the same manner as they did here with tenates, trees, etc.

The United States Commissioner then stated that he had no more questions to ask the witness at present.

The Mexican Commissioner then asked the witness the following questions:

Q. Was the work of destruction done by the river between the years 1864 and 1868 greater than in any other years, both before and after?—A. The greatest change was in 1864, when the destruc-

tion of the dam took place; after that the changes were more gradual.

Q. Do you attribute the changes in the river bed to the artificial work done on the American side besides what damages could be done by natural causes, of the river?

The United States Commissioner here stated that it had not been proven that works had been constructed on the United States side.

A. I think that some works done on the American side by Captain French above the Santa Fé depot did damage, and I saw the works myself.

Q. Please describe to me how the river made the change in 1864?—A. It began to tear up the bank on the Mexican side and kept coming this way sometime during that year until the whole volume of water struck the Mexican bank, leaving sand bars back where the old bed was, and never went back. The river remaining where it is now more or less, but farther North.

Q. Were the defenses that you referred to made with the tenates so weak that the ordinary current could destroy them, or was it necessary for the violence of the floods?—A. I think it was necessary for the strength of the high waters to destroy them.

The United States Commissioner then asked the witness the following questions:

Q. Please describe the character of the works you stated Captain French placed on the American side and their object?—A. The work done by Captain French on the American side was to prevent the river working towards El Paso, and they were done with big cotton-wood trees, and I think a few tenates and some rock.

Q. Were they not to protect the acequia leading down to the City of El Paso?—A. I think they were also built for that purpose. They were to protect both the banks and the acequia.

Q. When the force of the current of that year broke the Mexican dam, did not that fact change the current and throw it over towards the American bank near where those works were made?—A. Yes, sir. The current did strike the place where the works of Captain French were with very great force.

Q. About that time did you not make some works on the American side?—A. There was a canal built there, but the same year the people of El Paso stopped it up and that was the last of it.

Q. Will you please state about where it was located, how long it was, and about how much it cost?—A. The place where the canal is located you can hardly see; something like $1,000, more or less.

Q. It was a canal taken out below Captain French's works and intended to carry the water across the land on the American side, to relieve the current from striking the Mexican side?—A. Yes, sir. The canal was built through the sand bars to straighten the

course of the river and emptied out into the river below and I suppose about a thousand yards, more or less.

The questions and answers were then read to the witness and found correct.

The Joint Commission then adjourned to meet at 10 A. M., at the office of the Mexican Commissioner, on Monday, April 20th.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

CIUDAD JUAREZ, MEXICO, *April 20, 1896.*

The Joint Commission met at the office of the Mexican Commissioner at 10 A. M., pursuant to the adjournment of the 18th, and proceeded with the witnesses Flores, Ochoa, Provencio, and Serna, to the trees on the American side mentioned in the proceedings of Saturday. Mr. Flores pointed out the trees as being the ones mentioned in his testimony.

Mr. Ynocente Ochoa, a witness introduced by the Mexican Commissioner, was then asked the following questions, he having been duly sworn before, the United States Commissioner asking the questions:

Q. Do you remember these eight trees where we are now, South of the Santa Fé depot?—A. Yes, sir; I do.

Q. Are they the same trees you refer to in your testimony of two years ago?—A. I think they are.

Q. Do you remember having seen them some time about 1858?—A. No; I do not recollect so far back.

Q. About when do you remember to have first seen them?—A. I do not recollect the year when I first saw them.

Q. Please state about the year when you first saw them?—A. I think I saw them about 1864, more or less. Since then I have seen them several times.

Q. On which side of the river were they in 1864?—A. They were on the American side.

Q. How near the bank were they when you first saw them?—A. I do not recollect.

Q. Did you ever see them on the Mexican side of the river?—A. I do not recollect whether I did or not, because the trees here on the banks of the river grow so fast that I cannot say that these ones are the ones I saw then.

Mr. E. Provencio, a witness introduced by the Mexican Commissioner, having before been duly sworn, was recalled and the United States Commissioner asked him questions as follows:

Q. Do you remember ever having seen these trees, where we are now standing, in years gone by?—A. From 1862 to '64 I saw some trees here. I think they are the same trees, but I am not sure.

Q. If these are the same trees you saw about 1862 to '64, which bank of the river were they then on?—A. I think they were on the American side in 1862.

Jesus Serna, a witness introduced by the Mexican Commissioner, who had been formerly sworn, stated that there had never been any trees there about 1862.

The Joint Commission then returned to the office of the Mexican Commissioner and resumed the taking of testimony in this case.

Mr. Ynocente Ochoa was then recalled and questioned by the Commissioner for the United States as follows:

Q. Referring to the works you describe as having been built on the United States side below the Mexican dam, were they, like the works you described on the Mexican side, simply for defensive purposes?—A. I think those works were built for two objects. To prevent the river from going down and tearing away the American bank and at the same time to protect the acequia, which ran very close to the bank.

Q. The people on the American side had no other method of protecting that acequia, as by removing it away from the encroachments of the river, because of high rock banks; is it not the case?—A. By making these defenses, it was the cheapest way to protect the acequia.

Q. How could they otherwise have protected it?—A. They could have cut a ditch through the foot of the hill, which would have been more permanent but more expensive.

Q. The foot of the hill there is composed of rock, is it not?—A. It is composed of rock and limestone.

The questions and answers were then read to the witness.

Mr. E. Provencio, a witness introduced by the Mexican Commissioner, having formerly been sworn, was recalled and questioned as follows by the Commissioner for the United States:

Q. I think you stated in your former testimony that there had been no changes in the river from 1860 to '64. Is that the case?—A. Yes, sir.

Q. How old were you in '60?—A. Thirteen years of age.

Q. Do you think you could remember well at that age that there were no changes whatever in the succeeding years to '64?—A. No, there were no noticeable changes opposite the ferry.

Q. But there might have been some changes, might there not?—A. Probably there could be.

Q. Please describe the destruction of the bank on the Mexican side that you spoke of in your former testimony. Describe the size of the pieces of earth that you saw fall into the river?—A. When the river made the alarming change it carried away pieces of earth, one yard, two yards, etc., constantly, in intervals of a few minutes.

At the time of these changes the people would be standing on the banks watching a piece going down, and somebody would call look out, there is more going to fall, and they would have to jump back to keep from falling into the river.

Q. In this way the river tore off all the earth from the fields, did it not?—A. Yes, sir.

Q. About how deep did it cut down in tearing it away?—A. As the river made the curve, of course the volume of water was then deeper. When the river was washing away the land, which was composed of two kinds of earth, sand and, on top, clay, the water would wash the sand easily and then the weight of the clay, being one or two yards deep in places, would cause it to fall in. Under the clay was all sand, and I do not know how deep it was. The current was very deep.

The Mexican Commissioner then asked the following question:

Q. This work of destruction took place only during the great flood? did it not?—A. Yes, sir.

The United States Commissioner then asked the following questions:

Q. What became of these large pieces of earth that fell into the river?—A. They would go under the water and disappear.

Q. What was going on during this time on the opposite or American bank?—A. The sand banks would advance this way.

Q. Under the water?—A. It was under water when the river was high. When the river was low you could see it.

Q. Did you ever, in any of the changes that you have noticed in the river after the flood had subsided, recognize anything on the United States side that you had formerly seen on the Mexican side, trees, houses, etc.?—A. Yes, sir. Cotton-wood trees and one pear tree lodged in the sand. I could observe these trees in the sand frequently. All killed.

Q. Referring to the pear tree. Please describe about where you saw it when standing on the Mexican side?—A. The pear tree was about where the smelter is.

Q. Please describe about where it lodged on the American side?—A. Right on the sandbar that the river was leaving when it was coming this way.

Q. Above or below where it was taken from?—A. Oh! Far below.

Q. How far below?—A. As I do not know who owned the pear tree I can not tell how far it was.

Q. If you saw it standing on the Mexican side before it was torn away and afterwards saw it deposited on the sand bar on the American side you ought approximately to state the distance between the place you had seen it standing and the place where you afterwards saw it on the sand bar?—A. I did not say that I

saw this pear tree standing but supposed it belonged on the Mexican side because a great many trees were taken from there.

Q. Then you had never recognized anything deposited on the American side that you had known on the Mexican side?—A. No, sir.

Q. Have you ever known in any of these high floods the river to overflow the Mexican bank?—A. In 1864 when the great change was observed it did not overflow the Mexican bank nor from '64 to the present time.

Q. Have you ever known the current of the river to cut through the Mexican bank a new channel with two distinct banks and leaving the old bed with its old banks undisturbed?—A. No, sir. In eight days it will form a new bed at some points and abandon the place where it had formerly been.

Q. In your previous testimony you stated that the river has made very slight changes from '68. Do you know when the jetties known as the Garfias Jetties were built?—A. About 1885.

Q. That was eighteen years after you say there had ceased to be any noticeable change. If there had been no noticeable change for what purpose do you suppose those works, costing $80,000, were constructed?—A. The object of the works was that the people were tired of constant work in the river and have had continuous fear that the town might be washed away sometime. When the Railroad Company made a bridge it once was about to be washed away and they had to haul a great deal of rock to place at the head of it on the Mexican side, and that is why the works were constructed.

The Mexican Commissioner here asked the following question:

Q. Do you think that these works were constructed to protect against the slow and gradual work of the river or against the floods?—A. They were made to protect the town from being carried away in the event of another flood like that of '64 because the curve that the river had made was dangerous to the town.

The United States Commissioner then asked the following questions:

Q. Will you please describe how the destruction of the Mexican bank commenced in the flood of '64 when the dam was destroyed.—A. That I have already said my recollection only dates from the year 1860 and that in 1864 owing to a deviation which the river had at the dam, heretofore referred to, running entirely towards the Mexican side, it sent the current towards the American side in an impetuous manner against a stone bank, which now exists a little below said dam, and that the recussion of said shock returned the current precipitously towards "El Chamizal" (now Mejia) this being the cause of the lands and houses being carried away, there having been cases of many persons having been unable to save their personal property, the river from that time on being

subject to frequent changes caused by the strong flows and always coming nearer and nearer the city.

Q. When the destruction of the Mexican bank was going on here at Juarez, what was going on at Fort Bliss on the American side?—A. The same as occurred here.

Q. The United States bank there was being destroyed by the current of the river in the same manner that the Mexican bank was being destroyed at Juarez, was it not?—A. It occurred in consequence of the curve it made here but in years after.

Q. Do you know of the Americans putting up any works there to stop that destruction like the Mexicans did here at Juarez?—A. I do not remember.

Q. Which side lost the most land by the changes of the river, the Mexican side at Juarez or the United States side at Fort Bliss?—A. I can not exactly say about the loss, but I think that Juarez has lost more land and more valuable land than there.

Q. In all the years since 1860 you have frequently crossed the river to and fro at this point have you not?—A. Yes, sir; in front of here.

Q. Have you ever in any of your crossings found two independent river beds with two independent river banks to each, one carrying water and the other dry?—A. Sometimes when I crossed and the river was very high, then it would fall again it would leave a little arroyo on the American side.

Q. What was between this arroyo on the American side and the main channel on the Mexican side?—A. Sand only.

The Mexican Commissioner then asked the following question:

Q. Referring to the question of the United States Commissioner, about the two river beds, this way of forming two streams took place only by the violence of the great floods, did it not?—A. When the river fell from the maximum height this was observed.

The Joint Commission then, at 2 P. M., adjourned to meet when the proceedings now on hand, shall be translated and copied.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *May 7, 1896.*

The Joint Commission met at the office of the American Commissioner at 10 A. M., pursuant to the adjournment of the 20th, the minutes of the previous meetings having been translated and signed.

The United States Commissioner then presented certified copies of three different surveys made of the land in the United States, in front of Juarez, Mexico, called the Ponce Grant, which he desired

to introduce as evidence in this case, in order to prove that the movement of the river to the South has been gradual and continuous, extending over the whole time from 1852 to 1885, when the Mexican jetties were built, and was not confined to the period between 1864 and 1868.

The first survey was made on March 25th, 1853, by W. L. Diffendorffer, district surveyor, El Paso District, and was the original survey of the tract of land known as the Spanish Ponce Grant, and covering almost the entire front of the river where the changes have taken place since the Boundary survey was made. This survey embraced a little over 599 acres, and the United States Commissioner requests that the lines of the survey be platted upon the informal sketch now being prepared by the Consulting Engineers. By this survey he expects to prove, that between the date of the survey of the boundary line, some time in 1852, by Commissioner Salazar, and the date of this survey by Diffendorffer, the North bank of the river had moved Southward about 21 metres or 69 feet.

The second survey is a resurvey of the same land, made February 8th, 1859, by Anson Mills, Deputy Surveyor, El Paso and Presidio Districts. This resurvey showed the same tract of land as that surveyed by Diffendorffer to then contain 637 acres, showing an increase, by accretion to the North bank of the river in the five years of 38 acres, and as the distance of the last course of the Diffendorffer Survey to the North bank of the river was 1340 varas, while the same course, retraced by Mills, was 1423½ varas, the North bank of the river must have receded towards Mexico during these five years a distance of 83½ varas or 232 feet. The United States Commissioner requests that this resurvey may also be platted on the informal sketch above referred to, in order to illustrate these gradual changes prior to 1864.

The third survey covered a tract of land lying along the river in the upper part of the Ponce Grant, containing two caballerias or about 216 acres (considering the river as it ran in 1827, when the Ponce Grant was made), and was made by Joseph Wilkin Tays, Surveyor of El Paso County, on the 18th of November, 1872, and showed definitely where the North bank of the river was then located, from a point just below the lower street car bridge to the initial point of the Ponce Grant above, on the river (embracing the river front of all the lands in dispute above the lower end of this survey).

The United States Commissioner requests that this survey also be platted on the informal sketch above referred to, to prove that between 1872 and the construction of the jetties and bridges about 1885, the North bank of the river has moved towards Mexico at a point opposite the Santa Fé depot about 170 metres or 558 feet, adding, by accretion to the former accretions to these two caballeries, about 27½ acres of land, while the river, along the upper portion of these two caballeries moved North and took from the accretions to the two caballerias about nineteen acres of land.

The United States Commissioner also asked to introduce as expert testimony the following extracts from the official reports of Major O. H. Ernst, U. S. Engineer Corps, dated December 12th, 1888, and Engineer Ygnacio Garfias, dated March 25th, 1886, who were detailed by their respective governments to inspect the Rio Grande in front of the City of Juarez, Mexico, and conjointly examine into the character and regimen of said river.

[Extract from Report of Major O. H. Ernst, Engineer Corps, U. S. A.]

"Leaving a rocky gorge just above El Paso the Rio Grande issues into an alluvial plain some 5 or 6 miles in width, through which it flows in a bed of its own formation. The banks and bottom are of light earth and sand, easily moved by the currents. The river is a silt-bearing stream, carrying at times an excessively large proportion of solid matter. At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry. During the Spring freshets the water sometimes rises to a height of from 9 to 10 feet above the lowest, and flows with a rapid current heavily charged with sediment. At such times it possesses great building as well as destructive power. Between these two extremes there are at different seasons all degrees of volume and velocity. The size and character of the stream are ever varying, and its requirements as to form and dimensions of bed vary equally. The river's work of altering its bed to suit the necessities of the moment is never ending. The bed as it happens to exist now is the final resultant of all efforts of the stream, some of which have neutralized and some have aided each other, but the bed is not fixed. It is shifting from one position to another, altering its course, eroding one bank and building up the opposite one, forming islands and bars and then destroying them. The result of the natural changes is most noticeable in a bend where the erosion of the concave shore is sometimes continuous for many years, as appears to have been the case at El Paso. The location of the river at this place as it was found in 1855, is shown in black upon Plate I, which is an enlargement of a portion of Sheet 29, United States Mexican Boundary Survey, furnished me with your letter of instructions. Upon the same plate is shown

in red ink the location of the stream as it was found by Mr. Garfias, the Mexican engineer, in 1885. It will be observed that between those dates there has been a very considerable encroachment upon Mexican territory, with a corresponding advance of the American shore. The maximum distance between the shore of 1855 and that of 1885 is about five-eighths of a mile, and the total area added to American territory is about 490 acres. I have been unable to learn whether this movement has been continuous throughout the thirty years, or whether it has been intermittent."

[Extract from Report of Engineer Ygnacio Garfias.]

"Every body in movement unless meeting resistance follows a straight line. The body in movement which does not follow the straight line must have met some resistance which causes it to pursue a different direction. This rule holds with rivers, which tend always to follow a straight line, but when encountering resistance change their course, and wear away portions of their banks. In the curves of rivers is produced this effect, which science calls 'avulsion.'

"On the side opposite, that is to say, in the convex part of the curve, from the same tendency of the river to follow a straight line, it will follow the tangent of the curve for a distance more or less great, dependent upon the breadth of the river and its velocity; and consequently the space embraced between the tangent and the curve from the point of tangency until where this change of course occurs is occupied by still water, where is deposited the matter held in suspension and where is formed what is technically called 'alluvion.' These two phenomena just described are directly contrary, and as the convex side of the curve gains what is lost by the concave, and this evolution is constant and natural, unless the hand of man should interpose a limit the river would continue its advance, adding land each day to the convex side and each day carrying away territory on the other. This is exactly what has occurred in the case now under consideration.

"The curve of the river in front of Paso del Norte presents its convex side towards the Mexican bank, and from a comparison of the surveys of the Commission of 1852 with one made by me, it results that the river has changed its course towards the South 1,735 metres. Without the necessity for the inspection of maps, the aspect of the soil on both sides of the river proves the invasion of the right bank; for this side is covered with vegetable earth, which waters never deposit, and the left bank displays only sand and that character of soil produced only by alluvion. I think, therefore, that I have sufficiently demonstrated the loss of territory suffered by the Mexican side."

Both these extracts explain scientifically the manner and methods by which the changes in the river were made and the

object in introducing them is to prove that the changes were continuous and gradual by erosion from one bank and deposit on another, and not by such an avulsion as is described in Articles 1 and 2 of the Treaty of 1884, by the abandonment of an existing river bed and the opening of a new one or the deepening of another channel than that which marked the boundary.

The Mexican Commissioner thereupon stated that he had no objections whatever, to comprise in the proceedings the topographical maps executed by Messrs. Diffendorffer, Mills and Tays, as also the extracts of the reports of Engineers, O. H. Ernst and Ignacio Garfias, the more so as all those documents show plainly that the changes of the river were intermittent and, at times violent and in no manner slow and gradual as is required by Article I of the Treaty of 1884, in order to cause an alteration in the boundary line, solemnly established by the Treaty of 1848.

That he, on his part, proposed that the extract of the report made by Engineer Garfias, be included, as it completes and makes clear the above-mentioned one from the American Commissioner, which says literatim:

"Let it now be seen whether the Mexican Government possesses the right to construct works which may prevent the continuance of this damage and re-establish the bed of the river in the state it held when the united commissioners surveyed the line of boundary."

"The question is perfectly clear and simple. No necessity exists for recurring to an examination of doctrines in regard to alluvion and avulsion, for the existence of a formal compact nullifies all else."

"From these Conventions it is seen that the course of the river, as shown on maps of that epoch, shall be the line of boundary and that 'no change shall ever be made therein;' so that the boundary line is not the course of the river with the changes that it has had or may have, but the line which the river occupied as shown by the surveys of the joint commission on limits, and consequently the land which is to-day on the left bank of the river, but to the South of the line marked by the maps of the commission, belongs to Mexico, and is subject to the jurisdiction of the Mexican Government."

And, finally, the Mexican Commissioner proposes that the extracts and maps presented by the American Commissioner be handed to the Consulting Engineers, so that they make the respective notations in the report and map which they have been instructed to render.

He likewise proposed that a day be set in which to take the testimony of Messrs. Samaniego and Varela, which witnesses are, in his opinion, very important ones in the matter at issue.

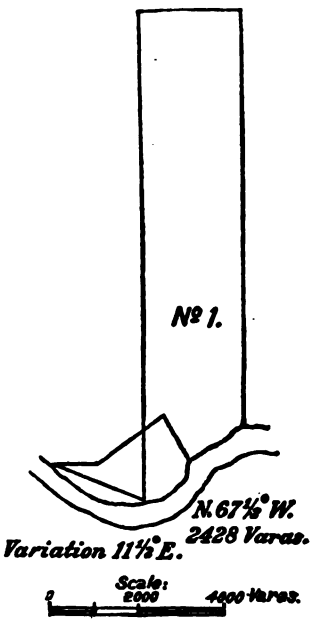
The United States Commissioner replied that while Sefior Garfias has the reputation of an expert in scientific engineering, he does not understand that his attainments in the legal profession are such as to qualify him to testify as a legal expert (this extract being headed 'LEGAL PART'), but notwithstanding this hé is willing to admit the extract for whatever it may be worth.

With the above qualification the Joint Commission then admitted to the record the testimony as proffered and directed the Consulting Engineers to plat on the preliminary sketch the three surveys and that the Field Notes of these surveys be attached to the proceedings.

The Joint Commission then at 1 P. M., adjourned to meet at the office of the Mexican Commissioner at 11 A. M., on Tuesday the 12th instant, to take the testimony of Messrs. Samaniego and Varela and such others as may be found necessary.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

(PLATS AND FIELD NOTES OF THE THREE SURVEYS.)



STATE OF TEXAS, } SURVEY NO. 40.
DISTRICT OF EL PASO. }

Field notes of a Plat of a survey of 599 acres and 3215 varas of land made for Mariano Barila, ass. of Juan Ma. Ponce, it being land to which he is entitled in part by virtue of a Grant of land

made to Juan Ma. Ponce, on the 24th day of September, A. D. 1827, by Agapito Albo, as Justice of the Peace of the town of lE Paso in part, by an additional Grant made to said Juan Ma. Ponce, on the 4th day of May, A. D. 1830 by José Ma. Cordova as Justice of the Peace of the Town of El Paso.

Said survey is No. 40 in Section No. 1, situated on the Rio Grande opposite the town of El Paso del Norte.

Beginning at a stake set on the bank of the Rio Grande which bears N. 67¼ W. 2428 varas from the S.W. corner of Survey No. 1. A cottonwood 10 in. in diam. bears N. 58 E. 35 varas; thence East 1104 varas to a stake and stone heap. Thence N. 53 E. 1861 varas to a stake and mound (no notable [visable] objects near); thence S. 26½ E. 1340 varas along a ridge of earth to the bank of the Rio Grande to a stake. A tornillo or screw tree 6 in. in diam. bears N. 10 W. 20 varas. Another screw tree 5 in. in diam. bears N. 25 E. 14 varas. Thence along the Rio Grande with its meanders 3903 varas to the place of beginning. Surveyed March 25th, 1853. Bearings marked. All arable land.

WM. BONNIR,
PELIJIO GARCIA.
Chain Carriers.

I, W. L. Diffendorffer, District Surveyor for El Paso District, hereby certify that the survey designated in the foregoing plat and field notes was made according to law and that the limits, boundaries and corners of the same together with the marks natural and artificial are truly described therein, and that the same is recorded in my office in book No. 1, page 29.

W. L. DIFFENDORFFER,
District Surveyor El Paso District.

SAN ELIZARIO, *March 25th, 1853.*

I do hereby certify that this is a true copy of the record on file in the County Surveyor's Office.

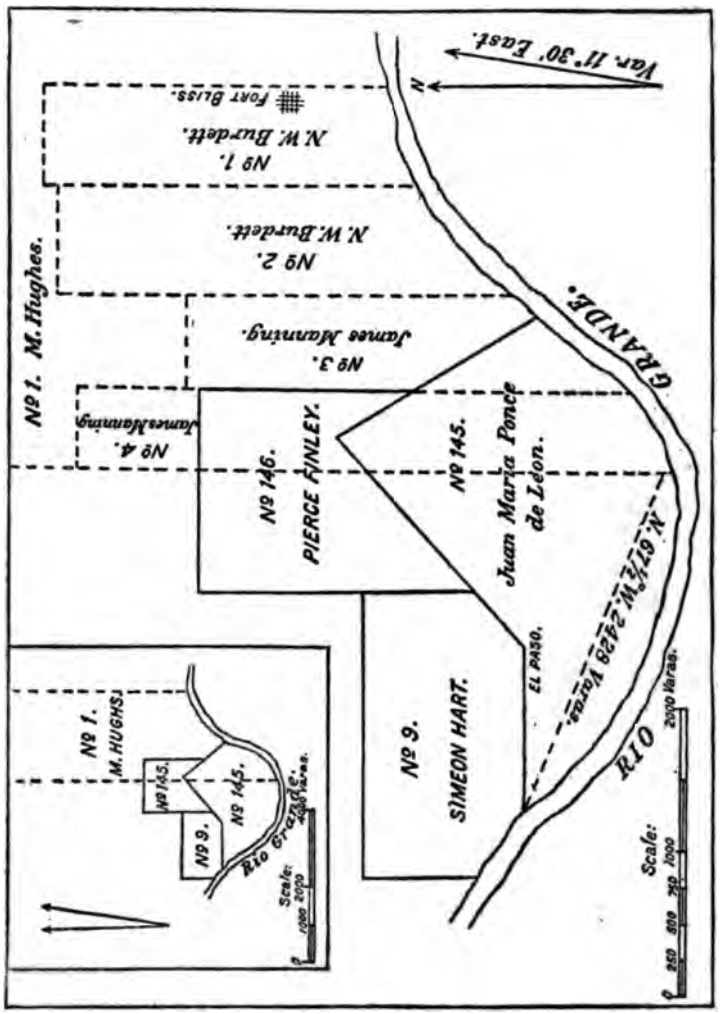
F. B. DABNEY,
Consulting Engineer.

STATE OF TEXAS,
EL PASO AND PRESIDIO DISTRICT.

Plat and field notes of a survey of 637 acres and 1250 square varas of land made for William T. Smith, Assignee of Juan Maria Ponce de Leon, it being the land to which he is entitled by virtue of an Act of the Legislature of the State of Texas, relinquishing all her right and interest in El Rancho del Ponce now known as the Town of Franklin, to said Juan Maria Ponce de Leon, approved Feb. 11th, 1858. Said survey is No. 145, in Section No. 1. Situated on the East bank of the Rio Grande in El Paso County, about 1 mile above Fort Bliss, containing the present town of El Paso.

Beginning at a cottonwood tree 8 In. in diam. on the bank of the river between two acequias, from which a Cottonwood 10 In. in

diam. marked X bears S. 55 E. 7 varas, and a tripl Cottonwood, each stock 5 In. in diam. marked X S. 55 E. 67 varas. I found the stations and bearings all obliterated, so much so, that Mr. W. L. Diffendorffer, the former District Surveyor, who made the survey could not establish any point save the 2nd station near Gidding's grave.



I took this point and ran back to the River to said tree for a beginning point which bears N. 67½ W. 2428 varas from the South West corner of Survey No. 1, made for Moses Hughs.

Thence E. (177 varas to a pile of stone and lime monument on the point of a hill) 1104 varas to a pile of stone and lime monument from which the head of Dr. F. M. Gidding's monument bears S. 83 E. 136 varas. Thence N. 53 E. 1861 varas to a stone heap

from which a Cottonwood 24 In. dia. marked X bears S. 57 E. 236½ varas. Thence S. 26½ E. 1423½ varas to a stake and three large stones on the bank of the river from which a Tornilo 4 In. dia. marked X bears N. 36 E. 7 varas and another 3 In. dia. marked X bears N. 79 W. 6 varas.

Thence up the river with its meanders to the place of beginning. Surveyed Feb. 8th, 1859.

Conflicts with supposed illegal surveys shown in the above plat.

WARO LUVIS,
ANTONIO BEYRUNDER,
Chain Carriers.

I, Anson Mills, Deputy Surveyor for El Paso and Presidio District, do hereby certify the foregoing survey is made according to law, and that the limit boundaries and corners with the marks natural and artificial are truly described in the foregoing plat and field notes.

ANSON MILLS,
Dep. Sur. E. P. and P. D.

I, Rufus Doane, District Surveyor for El Paso and Presidio District, do hereby certify that I have examined the foregoing plat and field notes and find them correct and that they are recorded in my office in book A No. 1, page 163.

R. DOANE,
Dist. Sur. E. P. and P. D.

SAN ELIZARIO, *Feb. 10th, 1859.*

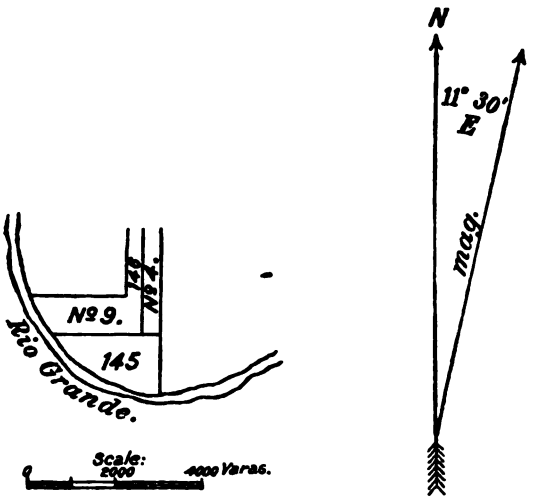
I do hereby certify that this is a true copy of the record on file in the County Surveyor's Office.

F. B. DABNEY,
Consulting Engineer.

STATE OF TEXAS,
COUNTY OF EL PASO. } SURVEY NO. 145.

Plat and field notes of a resurvey of Two Caballerios of land to which the State of Texas relinquished her right and interest to Juan Maria Ponce de Leon, by act of Legislature, approved 11th of Feb., 1858. Said survey is No. 145 in the County of El Paso, situated on the East bank of the Rio Grande, about a mile above old Fort Bliss.

Beginning at a point in the El Paso acequia, where it is intersected by the old Bardell acequia, and the place recognized as the initial point of the Ponce de Leon Ranch. Thence due East 1104 varas to the S. E. corner of Survey No. 9, made for Simeon Hart, 750 varas to the West line of Survey No. 4, made for James Manning, into said Survey 535 varas, in all 2389, to the N. E. corner. Thence due South 1360 varas to the river. Thence S.



70 W. 200 varas to a stake. Thence N. 83 W. 200 varas to a stake. Thence N. 73 W. 480 varas to a stake. Thence N. 55 W. 500 varas to a stake. Thence N. 70 W. 560 varas to a stake. Thence N. 46 W. 200 varas to a stake. Thence N. 40 W. 500 varas to a stake. Thence N. 28 W. 300 varas to the place of beginning.

Surveyed 18th Nov., 1872.

JAS. A. TAYS,
HENRY BLUFF,
Chain Carriers.

I do hereby certify that the foregoing was made according to law, and that the limits, boundaries and corners together with the marks natural and artificial are truly described in the foregoing plat and field notes.

JOS. WILKEN TAYS,
Surveyor El Paso County.

EL PASO, TEXAS, *6th Jan. 1873.*

I do hereby certify that this is a true copy of the record on file in the County Surveyor's Office.

F. B. DABNEY,
Consulting Engineer.

[Joint Journal.]

CIUDAD JUAREZ, MEXICO, *May 12th, 1896.*

The Joint Commission met at the office of the Mexican Commissioner pursuant to the adjournment of the 7th instant.

The witnesses Samaniego and Varela not being present, the United States Commissioner then presented certified copies of four official papers dated September 21st and 24th, 1827, from the Public Archives of Paso del Norte, Book No. 13, pages 59, 60,

61, and 62, corresponding to the year 1827, which embrace the application of Juan Maria Ponce de Leon for a grant of two caballerias of land opposite Paso del Norte, the grant of the same and the survey and field notes thereof; these two caballerias being the same that accretions thereto are the subject of this investigation, and for a more intelligent understanding of the case he requests that the Consulting Engineers be directed to plat the survey of the two caballerias on the sketch of the land, now in preparation by them, and that the papers above referred to be attached to the proceedings in the case.

The United States Commissioner also presented a certified extract of the testimony of José Sanchez, now deceased, in the District Court of El Paso County, Texas, in the November Term of 1884, Johns vs Crosby, the object of which is to prove the location of Ponce's first house, and that the house with adjoining lands was destroyed by the flood waters of 1830, and he further presented a certified copy of a Decree of the Alcalde of Paso del Norte, dated May 4th, 1830, denying the petition of Juan Maria Ponce de Leon to have restored to him the lands which the floods of the river had lessened his possession of two caballerias, and informing him that the Government could make no further replacement than the sand bar which the river had left. He asks that this testimony be incorporated in the journal of this day.

TESTIMONY OF JOSÉ SANCHEZ.

"I live in Paso del Norte, Mexico, where I was born. I am past my 78th year. Was clerk in Chihuahua 6 or 7 years, when I was young, and except that time I have lived in Paso del Norte. Knew Ponce de Leon perfectly well from the time I was very young until he dies. Have nearly always held positions under the Mexican Government. Have been Jefe Politico, and individual member of the Council. Was "Alcalde" many times, and Captain of the auxiliary troops in the regiment. I am present Cindico of the Council, and representative of the public ministry. Ponce lived in Paso del Norte, and on this side too. He would go from one side to the other after he became the owner of property over here, and lived in both places. He built on this side. At first he constructed a house here which the river afterwards washed away, and then Ponce built higher up.

"I know where the river ran in 1827; knew Buchanan's house; it ought to be standing now in block 33, lot 140, as shown in map. It came to be remote from where river ran in 1827. In 1827 the river was where the bridge is now, over the acequia between southeast corner, block 33, and southwest corner, block 181, below the court house, on El Paso street. River ran almost straight

from the bridge for some distance, passing the south edge of the new jail, on northeast quarter of block 198.

"Ponce's house was washed away about 1830, the river turned towards the new court house, on block 209, passing to the south edge of it, close to the clump of cotton-wood trees, between the new jail and court house. It can now be seen on the ground where the river ran. Know where Stanton's house is, on the Northwest quarter of block 205. In 1827, the river was some distance from that house; when it changed after the flood it ran there."

DECREE OF ALCALDE OF PASO DEL NORTE.

"No. 2. In accordance with the report of the commission who went to inspect the land about which you request a restoration of as much as the floods of the river lessened your possessions, as a result S. S. (terms of respect) the Council has resolved that only the sand-bar shall be given you, which the said flood left bounding on your lands, not being able to make a further replacement on account of the damages that such action would result to the neighborhood, God and I.

JOSÉ MARIA CORDOVA.
Julian Bernal, *Sec'y.*

PASO, *May 4, 1830*

TO SR. DN. JUAN MARIA PONCE DE LEON.

"This is a copy of its original from which it was made faithfully and legally to-day, the first of March, 1833; the same which was made at the request of Juan Maria Ponce de Leon on this common paper because of the lack of the proper kind, but with the precaution that the party must replace it, in virtue of which, the citizen, I, Ramon Dias, third Constitutional "Alcalde", of this place, thus certified and signed with my assistants, I bear witness.

RAMON DIAS.

ASSISTANT: Lazaro Archuleta.
ASSISTANT: José Antonio Barela.
Fee two dollars, I so swear."

The Mexican Commissioner stated that he had no objections to the platting of the two caballerias granted Ponce on the preliminary sketch, and include in the proceedings, the testimony of Mr. José Sanchez, and the decision of the "Alcalde" of Paso del Norte, both of which are herein inserted, as he deems them useful for the history of the case, although not of importance, in his opinion, as regards the question at issue of international law.

The Consulting Engineers are therefore instructed as above.

The Joint Commission then adjourned at 12:30 to meet again on the 13th instant at 11 A. M., to take the testimony of Dr. Samaniego and Mr. Varela.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *May 14th, 1896.*

The Joint Commission met at the office of the United States Commission at 10 A. M., to take additional testimony of Mr. Ynocente Ochoa, at the request of the United States Commissioner. The Mexican Commissioner being still unable to procure the attendance of the witness Samaniego, he not having been able to give his testimony before the Joint Commission on account of sickness, the meeting scheduled for yesterday was not had, and his examination is postponed until a future date.

Mr. Ynocente Ochoa, a witness introduced by the Mexican Commissioner heretofore, was then recalled, and asked the following question by the United States Commissioner·

Q. In your former testimony I think you stated that you had lost some lands by the changes of the river. Will you please state at what time or times you lost these lands, giving the year or years if practicable?—A. The land I referred to in my testimony of April 14th, I lost about three or four years ago in 1892 or 1893, but since that time the river has left this land again on the Mexican side; consqeuently I have recovered what I lost.

The Mexican Commissioner then asked the following question of the witness:

Q. Notwithstanding what you say, do you admit, as you said in your former testimony that the changes alluded to in 1862 and 1864, were violent?—A. The largest change was violent as I have already stated and took place in 1864.

The United States Commissioner then asked the following question of the witness:

Q. Was there any violence in the change that took away your own land in 1892 or 1893?—A. The river washed away all that land of mine in one year and I suppose it was by violence.

The Mexican Commissioner then asked the following question of the witness:

Q. Do you think that the carrying away of houses, trees, and tearing the shore, and also carrying away defensive works, is violence?—A. I suppose it is, but I will explain that the river sometimes washed away those houses, lands, and trees with a less power than at other times.

The questions and answers were then read to the witness and found by him to be correct.

The Mexican Commissioner then exhibited some communications from Mr. T. W. Dougherty, Attorney-at-Law, addressed to the Joint Commission, but after an informal conference with Mr. Dougherty, it was agreed by the two Commissioners not to formally present these papers until Monday next when the attorney, Mr. Dougherty, stated he might change or alter them.

The Joint Commission then adjourned to meet again on Saturday, at 10 A. M., May 16th, at the office of the Mexican Commissioner, to take the testimony of Dr. Samaniego.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

CIUDAD JUAREZ, MEXICO, *May 16, 1896.*

The Joint Commission met at the office of the Mexican Commissioner pursuant to the adjournment of the 14th, to take the testimony of Doctor Mariano Samaniego.

Doctor Mariano Samaniego, a witness on the part of Mexico, was then duly sworn by the Mexican Commissioner, and the following are the questions propounded by the Commissioner for Mexico, and the answers thereto:

Q. State your name, age, residence, and occupation.—A. Mariano Samaniego; 64 years of age; reside here in Juarez, Mexico; landowner and physician.

Q. How long have you resided here?—A. Since 1844 but I have been away several times. From '45 to '51 I was absent at school. From November '52 to December '59 I was away also; and from '72 up to date I have been away at times; the longest absence being from '77 to '79.

Q. Have you held any official positions in this place?—A. I have been Jefe Politico; Governor of the State of Chihuahua, and Congressman to Mexico.

Q. Either as an official or private party do you know anything of the peculiarities and characteristics of the river?—A. I know about the habits and characteristics of the river. The river is very changeable on account of the soil being movable.

Q. You say the river is changeable. During your experience on the river, have you noticed that these changes occurred during the whole year or only during the floods?—A. During the floods generally.

Q. Do you think that those changes were made by the violence of the waters?—A. These changes occur along the curves of the river and by the eating of the sand, and are more perceptible when the waters recede.

Q. Were you here in 1852? Can you tell then more about where the river ran at that time?—A. I was here in 1852. My recollection, from the distance we had to go from this side to the river and on the other side to the old Court House which was where the old Ponce house stood, in Block 17, I should say that the river ran then about where the Windsor Hotel is now.

The Mexican Commissioner here explained the informal sketch to the witness and asked him the following questions:

Q. The Emory and Salazar survey showed the river to be lower than where you have placed it. How do you explain it?—A. As I was young, I am not positive, because I did not pay much attention to those things and what I know is more from conversations with old residents. Lately I have conversed with Antonio Costa and before then with Jesus Serna, Father Ramon Ortiz and Nepomuceno Varela, the latter two, dead.

Q. Since 1852 do you remember of any changes in the river. If so please state them?—A. In the year 1862 there was a great flood. The river extended up to what was called Franklin, now El Paso. One could not see ordinary objects from one bank of the river to the other. Of course during the flood it did some damage but more when the river receded; the current all the time bearing more strongly towards the Mexican side. In 1864 the current was so strong as to destroy the jetties constructed on the Mexican side of the river, going behind them and this prevented the river from going back to its old channel.

Q. Since the year 1864 have any remarkable changes occurred in the river?—A. Yes, sir. Year by year, but the most noticeable one was between '68 and '69, owing to the works constructed by Captain French.

Q. From '62 to '64 in which those large floods occurred which you have mentioned, when the waters receded did you not observe that the river occupied a different channel from the one it occupied, at a perceptible distance from the other?—A. Yes, sir. The changes were to such a degree that at times during the night the river would wear away from fifty to one hundred yards. There were instances in which people living in houses distant 50 yds. from the banks, on one evening had to fly in the morning from the place on account of the encroachments of the river, and on many occasions they had no time to cut down their wheat or other crops. It carried away forests without giving time to the people to cut the trees down.

Q. Of the changes of the river that you have mentioned, were they all perceptible to the eye?—A. Yes, sir.

Q. And finally, is it not of your knowledge and a notorious fact that these changes do not take place in Winter?—A. There are never changes during the Winter.

The Mexican Commissioner here stated that he had no further questions to ask the witness at present.

The United States Commissioner then asked the following questions of the witness:

Q. Have you not lost some lands yourself by these changes in the river?—A. Yes, sir.

Q. How many pieces of land have you lost?—A. I remember of having lost three pieces which were those acquired from Diego Ortega, another from José Maria Sierra, another from Juan Maria Ponce and others that are now partly on this side and partly on the other side of the river.

Q. In what year did you lose the land you got from Ortega?—A. In 1864.

Q. In what year did you lose the land you got from Sierra?—A. I lost it gradually up to 1872.

Q. In what year did you lose the piece you got from Ponce?—A. They all stood along in the same line.

Q. Now the other pieces that have been partly destroyed; in what years were they partly destroyed?—A. Principally from 1862 to 1864 and after that gradually up to 1872, at which time, I being Jefe Politico, there were constructed some defensive works.

Q. Referring to the testimony you have given regarding the location of the river in 1852, is it your judgment now that the river then ran where the Windsor Hotel now is?—A. Of course I thought so from what I believed to be a fact, but from looking at the map of Salazar I think I must be mistaken in that idea.

Q. From 1852 did the river make any great changes towards Mexico about the Windsor Hotel up to 1859?—A. When I returned in 1859 the river was much nearer its present location.

Q. Can you explain on the map about where it was in that locality in 1859.—A. I think that the river ran about where the large irrigation canal now existing runs.

Q. Now lower down the river about the Court House in El Paso, do you recollect where the river ran in that location in 1852?—A. Below the Court House the river passed by what was called Fort Magoffin near the present dwelling of Mr. Magoffin.

Q. Referring to your testimony taken two years ago before the Civil Authorities in Juarez, I find an answer to the 5th interrogatory which may explain your present testimony regarding the Windsor Hotel. In that answer you state that you specially remember that when you left in 1844, the river ran where the Hotel Windsor is now. May you not have confused this period, 1844, with 1852?

The answer to interrogatory 5th given by the witness to Señor Felipe Seijas, District Judge, on September 4th, 1894, was then read to the witness as follows:

"In his answer to Interrogatory 2nd, he states that he had resided 33 years in this town, still he now states that he lived here

from the year 1841 to 1844. That from the last mentioned year up to 1859 he was absent; he being able to perceive on his return that the river had changed its course notably in the space of time included between the years 1844 and 1859; he specially remembers that when he left in the year 1844 the river ran where the Hotel Windsor is now situated, or more or less at a point on, now El Paso street, equidistant from its Northern and Southern extremities. That the change took place from the year 1859 to the present time in an abrupt manner, especially in the year 1865. That in regard to the changes of said river from the year 1844 to 1859, he can say nothing as to this period of time because he was not here."

A. It is not strange that the river might have run there more or less between 1844 and 1852 because the changes were very gradual and there were trees that prevented violent encroachments.

Q. In this answer, above referred to, you also stated that you were absent from 1844 to 1859. How do you explain the discrepancy?—A. It is probably due to it having been overlooked in taking my former testimony because I returned here in 1852 on a visit.

Q. How long did you remain, when you returned on a visit in 1852?—A. From the month of March to November of that year.

Q. Then eight months residence here during 1852 was all the opportunity you had to observe the then location of the river?—A. Yes, sir; that was the only occasion I had to notice the then location of the river.

Q. You have testified that Captain French constructed some works on the United States side in 1868 or 1869. Do you know for what purpose he constructed those works?—A. In order to throw the river over to this side because it threatened to destroy a ditch he had on the American side.

Q. Were not these works necessary to protect that ditch on the American side?—A. I do not believe so because the ditch was not so near as to be in absolute danger.

Q. Was it not true that the breaking of the Mexican dam across the river threw the current with force against the American side at a point where these works were being constructed?—A. From the very beginning the current bore toward the Mexican side. Captain French had built his defenses on a rocky place, which was not susceptible of being encroached upon by the river.

Q. Then what was the object of building the defenses if the river could not encroach upon it?—A. With a view of throwing the current more to the Mexican side, because he had land on the other side which would be increased.

Q. Then the works were to protect these lands, which he was fearful of being destroyed, were they not?—A. Yes, sir. Also with bad intent, because he had no sympathy toward Mexico, as publicly expressed by him at many times.

Q. Did you have any sympathy with Captain French regarding the peril of loss of his land?—A. They were not in danger.

Q. You have just testified that one object was to protect the lands that he owned.—A. His main reason was to do harm to the Mexican bank.

Q. About the time Captain French was constructing these works on the American side were you not constructing some works on the American side?—A. No, sir.

Q. Did you not dig a canal or make arrangements for digging a canal to turn the river through the sand bars on the United States side?—A. In the first place, I was not in authority at that time, and in my private capacity I bought some land from Mr. W. W. Mills, and then, with the consent of all the people there, a canal was dug on the United States side with a view of diminishing the current from bearing on the Mexican side, which was done with the full consent of the United States authorities.

Q. Who were these authorities?—A. I do not remember, but the consent was notorious, as there were more than 100 men at work on that canal.

Q. Who were these 100 men working on the canal; Mexicans or Americans?—A. They consisted of men living on the Mexican side of the river. Those most threatened by the current of the river on the Mexican side.

Q. Is it true that at that time there were few Americans living on the United States side?—A. Very few.

Q. Was there any city organization on the United States side at that time?—A. There were authorities; a custom house existed then and a District Court.

Q. You say that Captain French had bad intentions toward the Mexican side because he was trying to throw the current against that side. Had you good intentions when you were trying to throw the current on the United States side?—A. Our object was not to do damage to the United States side, but to divert part of the current.

Q. I think that was your object, but I think a similar generosity would give the same credit to Captain French. Do you not think so?—A. Captain French built his defenses at a place where they were unnecessary, as far as protection went, and hurt this side. Referring to the ditch; many of the inhabitants came there to see it dug and make fun of the idea, because, as they thought, our intention was to throw the entire river to that side, whereas it was a canal that would not have done any harm, and constructed with a view of irrigation.

Q. Did not the Americans fill up the canal soon after you constructed it?—A. No, sir. It filled up by itself, because the water did not continue running through.

Q. You say you purchased the land on the American side through which you built this canal. From whom did you purchase it?—A. From Mr. W. W. Mills.

Q. Have you a recorded title to that land?—A. The title exists and the survey of the same made by Mr. Fountain. I do not know if it was recorded or not.

Q. How much money did the construction of this canal cost, and from what fund was it paid?—A. It did not cost any money, for the people themselves that wanted their property protected did the work.

Q. About how many days' labor, more or less, did it take to construct this canal?—A. About 100 men for nine days.

The Joint Commission then adjourned until Monday at 10 a. m., to meet at the office of the Mexican Commissioner, the examination of Doctor Samaniego being completed.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

CUIDAD JUAREZ, MEXICO, *May 18th, 1896.*

The Joint Commission met at the office of the Mexican Commissioner at 10 A. M., pursuant to the adjournment of the 16th instant.

Messrs. T. W. Dougherty and A. H. Kirby then presented themselves as representing the claimants Ronquillo and others, and handed to the Joint Commission a communication signed by them dated this day.

The Joint Commission then stated to the gentlemen that, referring to the petition and papers presented by them at the meeting on the 16th, together with the communication presented by them to-day, that they would be answered by the Joint Commission at the next meeting on the 20th. Mr. Dougherty replied that he had a very competent man, Mr. Sam. Wade, to do the engineering work, and that Colonel Mills was well acquainted with him.

The Mexican Commissioner then stated that a very important witness, Doctor Samaniego, had informed him several days ago that Mr. Dougherty had reported him to his government in Mexico as having neglected or overlooked the interests of his, Dougherty's, clients; and the Mexican Commissioner then asked if this was true, and if so, requested of Mr. Dougherty that a copy or copies of such communication or communications be furnished him. Mr. Dougherty replied that he had sent a letter to the President of Mexico, inclosing a petition from some of his claimants, asking that directions be given that their testimony be taken before a final decision as to the boundary was made.

The Mexican Commissioner then stated that it was necessary to have these papers or copies thereof in order that the Joint Commission could make a full answer relating to all such matters. To this Mr. Dougherty replied that he would deliver to the Joint Commission full copies of the communications to-day or to-morrow (18th or 19th).

The Mexican Commissioner then asked Mr. Dougherty why he did not present the petition that he sent to Mexico to the Mexican Commission; to which Mr. Dougherty replied that he had been informed that any testimony in regard to placing the line further North of the old river, as laid down by the Engineers, from the Emory and Salazar maps, would be useless.

For a better understanding by the reviewing authorities of the two governments, the first petition to the Joint Commission, signed by Mr. T. W. Dougherty, with the inclosed affidavit of Price Cooper and the inclosed statement of Quirino Lara, and the communication dated May 18th, 1896, signed by T. W. Dougherty and A. H. Kirby, as well as the letter of the Joint Commission to Messrs. Dougherty and Kirby, are here below incorporated in the proceedings of this day in the order mentioned.

"*To the International Boundary Commission, of the United States of America and the United States of Mexico, now in session in the City of El Paso, Texas.*

The claimants of lands between the Rio Grande River as it ran at the time of the Treaty between the two countries in 1852 and 1853, and where the said river now runs, through the undersigned, their attorney, respectfully ask that before the boundary line is agreed upon that you have brought before you and take the testimony of the following witnesses, to-wit: Price Cooper, Sam Bean and John Clark, all American citizens. I hereto attach affidavit of Price Cooper and am informed that the other witnesses will testify to the same facts. Also Dr. Samaniego, who is ex-governor of Chihuahua and ex mayor of Juarez. Quirino Lara, (whose statement is hereto attached) and Dr. Samaniego, Juarez, Mexico, has examined the same and states it is true. Francisco Varela, El Paso, Texas, Jesus Tellis, Marcello Armijo, Francisco Provencio, José M. Sierra Gregorio Herrera, Dolores Bernal, all of which reside in Juarez, Mexico, i. e., also Roy Bean who resides in Langtry, Texas, T. T. Teel, Sam Wade, who live in El Paso, Texas, all of which will testify that the Rio Grande river ran where Price Cooper testifies in his affidavit it ran in 1852 and 1853. Price Cooper lives at Ysleta, Texas, Sam Bean, Los Cruces, N. M.; also George Baylor lives at Ysleta, Texas, John Clark, San Elizario Texas. We ask that these witnesses

be interrogated in regard to where the river ran in 1852 and 1853 and when it changed, and how it came to change its channel. Also ask that I be permitted to be present when said witnesses are examined and be permitted to ask questions in regard to where the river ran in 1852 and 1853, and such other questions as may be important in proving where the line or river was in 1852 and 1853. And that you require said witnesses to go on the ground and show where the river ran in 1852 and 1853, and in duty bound will ever pray, etc.,

T. W. DOUGHERTY,
Attorney for Claimants."

THE STATE OF TEXAS,
COUNTY OF EL PASO.

I, Price Cooper, do for the purpose of saving the trouble and expense of returning to El Paso, Texas, make the following statement of facts, the same being my testimony to be used before the International Boundary Commission of the United States of America and the United States of Mexico. I came to El Paso, Texas, in 1842, and have lived in El Paso and vicinity ever since. I saw the surveyors surveying the line between the United States of America and the United States of Mexico, between Juarez, Mexico, and El Paso, Texas. I know where the Rio Grande River ran in 1853; a little North of where the Santa Fé Railroad roundhouse now stands, from there in an Easterly direction to where 1st street in El Paso, and from there it ran under the operahouse and from thence in an Easterly direction to some old trees between Oregon and Utah streets and ran through the Pomeroy transfer corral. Thence under where the jail is now; and from there in a North Easterly direction and North of where the Texas and Pacific Railway depot is now. Thence crossing Overland and San Antonio Streets and going in the direction of Concordia. It ran there until in 1862, when it changed suddenly to near where the street-car track turns on Seventh St. The change was caused by an overflow in the river by the river leaving the old channel and forming a new one. All the changes in the river have been made by sudden changes by the river, abandoning the old channel and taking a new one. I know that Captain French put in a dam to prevent the river from returning to its old channel of 1853. This dam was built by Captain French after the overflow in the river in 1862 when it changed from the old channel and made a new one. Captain French was an American citizen and was Town Marshall of the town of El Paso, Texas.

"PRICE COOPER."

"Sworn to and subscribed before me this 21st day of April 1896

"T. H. CONKLIN,
"*Notary Public, El Paso Co. Texas.*"

STATE OF TEXAS.
COUNTY OF EL PASO. } ss.

"I, Quirino Lara, hereby declare and render my testimony which may be used before the Hon. Boundary Commission of the United States of America and of the United States of Mexico, to-wit:

"I was born in the year 1840 at Paso del Norte, in the "Partido" (Section) "Barrial" where I lived up to the month of December 1879, when I moved to the "Partido Chamizal" on the North side of the river, after its change in 1862, where I have lived until this present date. About the year 1872 I was Governor of the Indians "Pueblo" of El Paso. About the years 1846 at the time of the battle of Temascalitos, and in 1853, One thousand eight hundred and fifty three, when the American flag was hoisted at La Mesilla, I saw the Rio Grande or Bravo running between Paso del Norte, now Juarez City, and El Paso, Texas, at the point I will proceed to designate. It ran where the water tank is now located, adjoining the round-house of the Santa Fé Railroad; thence Easterly over what is now called First Street, passing on the South side of the City Hall and Opera House; and, further on, where the house called "Cuco" is now situated; thence Westerly, where the County jail is now located; and continuing Westwardly over the place now occupied by Overland St., a little above the Texas and Pacific Station in the direction of Concordia. Thus did the river run up to the year One thousand eight hundred and sixty-two (1862) in which year it changed suddenly to the place where there now lies the roadbed or railroad that passes by the little Smelter; and, when it reached the point where Campbell Street is now situated, turned to the North East in the direction of Fort Magoffin.

"The river did not change gradually by eating away the land, but did so by cutting it off and forming a new channel. I worked on a channel dug by Dr. Mariano Samaniego in the year 1869 with the object of changing the river to its old place, but Captain French constructed a dam farther up, which prevented the river from running into the channel made by Dr. Samaniego.

"QUIRINO LARA"

To the International Boundary Commission, of the United States of America and of the United States of Mexico, now in session in El Paso, Texas.

The claimants of the disputed territory between El Paso Texas, and Juarez, Mexico, through their attorneys T. W. Dougherty and A. H. Kirby, accept your proposition, made on the 13th instant to us to make a lineal survey of that part of the boundary line between the two countries, between El Paso, Texas, and Juarez, Mexico, and will make said survey as speedily as possible, and when made submit the same to you. We also accept your proposition of giving us access to your maps, field notes and all the data of every description you have in your possession in regard to the boundary survey, made in 1852 by both Governments. We

shall not ask or expect to take these records out of the respective offices of the two commissioners, but that our engineers and attorneys shall be permitted to examine the original field notes and maps of both governments pertaining to the survey of the boundary line of 1852 and ratified by both governments in 1853. We also ask that as soon as we make our survey of said line that you proceed to take the testimony of such of the various witnesses that we have heretofore submitted to you as we shall deem necessary to establish by oral testimony the correctness of the line surveyed by us. We have employed competent surveyors to make said surveys and are ready to commence work at once, and will introduce our engineers and surveyors to you as they arrive here, one of whom is here and will be brought forward and commence work as soon as you may desire him to do so; the others will be here and ready to work by the 19th inst., or soon thereafter.

T. W. DOUGHERTY and
A. H. KIRBY,
Att'ys. for Claimants."

EL PASO, TEXAS, *May 18th, 1896.*

"EL PASO, TEXAS, *May 18th, 1896.*

To Messrs. T. W. DOUGHERTY AND A. H. KIRBY,
Attorneys for Claimants, Representing Ronquillo and others, El Paso, Texas.

GENTLEMEN: The International Boundary Commission, before whom you laid your petition on the 16th instant accompanied by the affidavit of Price Cooper and the statement of Quirino Lara, and a later communication on the 18th instant, have agreed upon answering you as follows:

1st. That from the start you had a misunderstanding in supposing that the International Commission could entertain anything relating or contrary to the boundary line laid down by Messrs. Salazar and Emory, in the year 1852, and solemnly accepted and recognized by the Governments of Mexico and the United States of America.

2nd. That said line having been accepted as the legal truth, the only error admissible, would be the one which the Consulting Engineers, Messrs. Corella and Dabney may have committed in the transcription and marking of said line, on the preliminary map presented by them to the Joint Commission, but since the Commissioners have full confidence in the aptitude and skill of said engineers and there being no good ground to suppose that they have committed any errors whatever, the Commissioners will not make any investigations on that subject.

3rd. That, as regards the examination of witnesses, asked for by you, the Joint Commission deem it their duty to reiterate that in as much as they have no right to change an iota of the Treaties of Guadalupe Hidalgo by virtue of which the boundary line between

Mexico and the United States of America, was established, they have to accept and abide by the same and must abstain from all investigations in relation thereto.

Therefore the petitioners are hereby notified that the examination of the witnesses you may present shall be limited to the setting forth or clearing up of the manner in which the Rio Bravo del Norte may have changed the location it had in 1852 as shown on the map of Messrs. Salazar and Emory, to its present location in 1896, as shown on the map of Messrs. Corella and Dabney, the Consulting Engineers of the Commission.

The Commissioners agree jointly in the above as their answer to your petition and letter.

Very respectfully, yours,

ANSON MILLS,
United States Commissioner.

F. JAVIER OSORNO,
Mexican Commissioner.

The Mexican Commissioner then stated that he had no further testimony to offer in this case on the part of Mexico save that he would like to establish the fact that the river did not make changes in the winter time. To which the United States Commissioner replied that while he was not ready to admit that it never had made changes in the winter time, he had never known or heard of it making changes during that season for the reason that high waters were seldom if ever known during the winter months. The United States Commissioner further added that as the Commissioner on the part of Mexico had closed his testimony he had no further evidence to offer on the part of the United States.

The Joint Commission then at 12.30 P. M., adjourned to meet again when the preparation of the proceedings of the 16th and 18th of May were ready to be signed.

ANSON MILLS.
JOHN A. HAPPER.

F. JAVIER OSORNO.
S. F. MAILLEFERT.

[American Engineer's Reports.]

EL PASO, TEXAS, *May 13th, 1896.*

COLONEL ANSON MILLS,
United States Commissioner,
International (Water) Boundary Commission,
El Paso, Texas.

DEAR SIR: Yesterday, in a consultation I had with Colonel Corella, the Consulting Engineer for Mexico, he said that he thought it would be best for us to make separate reports on the Chamizal Case, No. 4, and if after the Commissioners had considered them, there were no great differences, we would sign them jointly.

I agree with him, and unless it is objectionable to you, I respectfully beg to submit the report with this.

The preliminary map submitted has been signed by Colonel Corella and myself.

Very respectfully, F. B. DABNEY,
Consulting Engineer.

EL PASO, TEXAS, *May 13th, 1896.*

COLONEL ANSON MILLS,
United States Commissioner,
International (Water) Boundary Commission,
El Paso, Texas.

DEAR SIR: I have the honor to submit the following report on the Chamizal Case, No. 4.

In the Joint Journal of November 6th, 1895, you request that the Consulting Engineers make a "preliminary map to enable the Commissioners to identify the land in dispute."

On December 16th, 1895, we commenced a survey of the river between Juarez and El Paso and completed it on January 5th, 1896, including in the topography taken, a part of both cities and everything that was thought to have any bearing on the case; from these notes the preliminary map submitted was made, and in addition, copies of records in the County Surveyor's Office of El Paso County, that show points on the river at different periods, were made, and are platted on this map with dates, and by whom the survey was made, given.

The river of 1852 was taken from the Mexican sheet No. 29, of the Boundary Commission of 1852 (this sheet is signed by Major Emory and Mr. Salazar, the Commissioners), and is shown in red on the map. It was enlarged by pantograph from a scale of one in sixty thousand to one in five thousand, and its position on the map was fixed by the computed latitude and longitude from the initial point of the boundary as given on the Mexican sheet No. 29; this location of the initial point does not agree with the United States sheet of the same number as to longitude, so meridians from both are shown on the map. The sheet No. 29 of the United States Commission of 1852 was set aside by our government, it being objected to by the Mexican Commissioner because if ever signed, the signatures appeared to have been erased. A note on it shows that the survey was made six months later than the Mexicans made theirs. It was enlarged from a scale of one in sixty thousand to one in five thousand, and is shown in broken lines on the map submitted.

In addition to the preliminary map, a final map has been made and is respectfully submitted with this.

In the Joint Journal of April 14th, you request the Consulting Engineers to make a report giving all information possible regarding the change in the river from 1852 to its present course, "said report to include all available data and land marks to be found on the

disputed ground, such as trees, old banks and all others deemed of interest." As shown on the map, the river in 1852, and now, makes a long curve almost around the City of El Paso, with its convex side against the Mexican bank. The soil on the Mexican bank is of black loam for a depth of 1.2 metres, underlying which is first a fine sandy loam and then coarse sand and gravel, the convex side of the curve made by the river's bed would throw the current against this bank and the sand and gravel would be washed out by its action, thereby leaving the stiffer material above, without a support, which would then fall into the river. This has evidently been the case here since 1852 to the time the Mexican Government built jetties to protect their bank from farther invasion by the river; the land on the North between the present river bed and that of 1852, as shown on the map, is of sandy loam mixed with vegetable matter, underlying which is coarse sand and gravel, it is practically level and apparently "made land" as in no place between the South bank of the river of 1852 and the North bank in its present location is there any evidence of an abandoned channel or the banks of one, all trees that show much age and are in or near the disputed territory were accurately located and are shown on the map.

Very respectfully yours, F. B. DABNEY,
Consulting Engineer.

[Joint Journal.]

EL PASO, TEXAS, *May 30th, 1896.*

The Joint Commission met at the office of the United States Commissioner at 11 o'clock A. M., pursuant to the adjournment of the 18th instant, and the journals of the meetings of the 16th and 18th of May were then signed.

The Mexican Commissioner then stated that the investigations in the Chamizal Case, No. 4, having been completed he had received instructions to proceed to Mexico to consult with his Government pending the finishing of the map of the Mexican Consulting Engineer and that the final decision in this and the Island of San Elizario Case will be given by him immediately upon his return from Mexico, from which place he will return within a fortnight.

The United States Commissioner replied that he understood the Consulting Engineer on the part of Mexico was compiling a map tending to show a depression, indicating an abandoned channel of the river, and that he was prepared to show that this depression was caused in May, 1891, by the river's current breaking through where the irrigation canal is shown on the map, and carrying away all four of the bridges across that canal and scouring out what he understands the Mexican Consulting Engineer claims to be evidence of an abandoned channel.

The United States Commissioner further insists that before the departure of the Mexican Commissioner, the case of the Island of San Elizario should be finally determined, as he understands all the evidence necessary has been taken and that neither party desires to make further investigations.

The Mexican Commissioner then replied that he has made no study whatever of the Island Case, because in his mind, he cannot decide it until after this Chamizal Case is decided.

The United States Commissioner then stated that he had been instructed by his government to subordinate the investigations regarding the distribution of the waters of the Rio Grande to the expeditious conclusion of the Treaty work of the Commission. That he had since received instructions to make greater and more extensive investigations in regard to the distribution of the waters of the Rio Grande and to conclude said investigations by January 6th next, and had been informed that he was to negotiate with the Mexican Commissioner, Señor Osorno, on that subject, but later had been advised that there had been some change in regard to who should represent Mexico in that question. He had instructed his Engineer, Captain Derby, to be here on the 1st of June and would now like to ask of the Mexican Commissioner whether anybody would be able to confer with him and his Engineer, Captain Derby, on or about that date and who the person would be.

The Mexican Commissioner replied that he would consult with his Government on this very important matter and will wire the United States Commissioner as soon as he has a decision.

The Joint Commission then at 12 M., adjourned to meet again on the return of the Mexican Commissioner from Mexico.

ANSON MILLS, F. JAVIER OSORNO,
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *June 24, 1896.*

The Mexican Commissioner having returned from Mexico, the Joint Commission met at the office of the United States Commissioner at 10 A. M., the earliest date practicable.

The Mexican Commissioner then presented the report in Spanish of seventy-four pages of manuscript and map, of his Consulting Engineer Lieutenant Colonel Corella, in the Chamizal Case, No. 4, and stated that he was ready to proceed with the consideration of that case as rapidly as the United States Commissioner desires.

The United States Commissioner replied that this was the first official knowledge he had of this report, although he understood that the Consulting Engineer for Mexico has been engaged upon it some eight months. That the United States Commissioner had presented the report of his Engineer to the Mexican Commissioner long ago and all other papers and evidence that he thought material to the case; but it would now be necessary for him to have this report of the Consulting Engineer for the Mexican Commission translated in order to understand what bearing it had upon the case before he could proceed any further with its consideration. That he would have that done as rapidly as possible and when finished would advise the Mexican Commissioner whether he wished to introduce any further testimony to controvert what may be set up in this report.

The United States Commissioner then again proposed to proceed with the consideration of the Island of San Elizario Case, No. 10, which he understands has been completed in so far as to investigations on either side is concerned.

The Mexican Commissioner here stated that he was ready to enter into the discussion of the Island Case whenever the United States Commissioner desired, but the decision to be signed after the agreement or disagreement on the Chamizal Case.

The United States Commissioner then stated that at the meeting of the Joint Commission on May 30th last, he had stated to the Mexican Commissioner that it was not clear in his information as to whom he should confer with in regard to the investigations as to the distribution of the waters of the Rio Grande and an international dam and that therein the Mexican Commissioner replied that he would consult with his Government in this very important matter and would wire the United States Commissioner as soon as he had received a decision, but that he, the United States Commissioner, had heard nothing further on the subject, and now asked with whom he should confer with in that matter.

The Mexican Commissioner stated that as he knew he was coming ahead of Mr. Ibarrola, as he did, he did not consider it necessary to wire, and that Mr. Ibarrola will be the person who will treat with Colonel Mills in the matter regarding the international dam.

The Joint Commission then, at 11.30 A. M., adjourned to meet to-morrow, June 25th, at the office of the United States Commissioner.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Mexican Engineer's Report.]

C. JUAREZ, *May 26, 1896.*

Technical study made and report thereon, presented to the Joint Commission, by the Mexican Consulting Engineer, in compliance with an order, dated April 14th, 1896:

BRIEF GEOLOGICAL NOTES ON THE VALLEY OF EL PASO.

Distant nine kilometers from El Paso, to the North, the mountains near the "Thalweg" (A German word meaning literally valley-way) of the Rio Grande allow the formation of small table-lands and sandy plains, at the bottom of which there are gathered banks of alluvial soil. These plains and table-lands extend up to and interjoin with the bases of the mountains that lie scattered and are discernible in all directions, and, although they contract and form the pass or narrows called "La Jornada del Muerto", continue thence in a Northerly direction and turning the most Northerly peak of the "Los Organos" mountains can be followed unto the most distant horizons, constituting the vast desert comprised between the Rio Grande and the Sacramento range of mountains.

At about five kilometers North-Westerly from Ciudad Juarez, the channel of the river begins to be incased, and continuing its course in gradual descent, becomes more narrow with high slopes—a true opening made by the flowing waters through sedimentary rocks and of stratified calcareous formation. Continuing, the channel enters the open valley, widens and contracts occasionally between the alluvial deposits of the river-bed, and, finally describes curves more or less acute in the general course it pursues which is from North West to South East.

The valley presents traces of very old fluvial movements, the vestiges of which lead the observer to deduct that the waters have bathed even the foot of the lateral mountains, before the great river-bed was filled up. As is well known, many centuries are represented by the layers of alternate deposits of sediment and compressed sand, alluvium, sandy argal, tophus and gravel, conglomerate calcareous matter and lastly of rocks that constitute the present soil that has been formed at the expense of the upper lands washed off by corrosive forces.

The valley proper of El Paso is surrounded on the north by Mount Franklin, on the North-West by hills of the dam; on the West and South-West by the movements and accidents of ground of

little elevation that reach on the extreme South-West the Juarez ridge of mountains; on the South, by the sand hills (Médanos) that, turning South-Eastwardly, join a chain of hills that run parallel with the river, on its right side, up unto the foot of the Guadalupe and San Ygnacio mountains; on the East and North-East by the alluvial banks and hills of limy conglomerates that detach themselves, respectively, from El Paso and Mount Franklin towards Ysleta, Socorro and San Elceario, forming the slope on the West side of the great "thalweg".

Mount Franklin (between the South-Western sides of which, and the river, lies El Paso, Texas) presents according to Doctor C. C. Hall, stratified calcareous formations with a pronounced uniform inclination of 45° to W. S. W. Its declivities show igneous disruptions and dislocations and assume the general aspect of the cretaceous period.

The calcareous stratifications are perceptible from the valley on account of their well defined sections of curvilineal contours, specially at the North-Eastern slopes that have been washed.

Said Professor Hall is of the opinion that those stratifications belong to the carboniferous species visible at Eagle Springs.

On the hills of the dam in the North-Western region, sedimentary and lime rocks prevail, the layers presenting generally, the silurian formation, and continue to the West as proven by the existence of erratic fossils.

M. Wislizemus noted that the broken region West of the valley, or rather the occidental quadrants, show an upheaval that can not be classified with precision, as the visible confusion of igneous matter in different graduations of metamorphosis, either intermixed with sedimentary matter or compacted by fusion, in juxtaposition with the formations of alluvium that are also found there, render it impossible to detect the connection that may have brought together these heterogeneous formations.

According to Hall, the Juarez mountains present a character similar to that of Mount Franklin and Wislizemus is of the opinion that the Southern part of the valley is similar to its Western part, and without any strong pronunciation of character, all along a strip that ends on entering the sand hills (Médanos).

The North-Eastern hills and small table-lands formed of conglomerates join on the East the alluvia and follow the general direction of the valley limiting it on its left side.

The above is a geological sketch of the valley of El Paso.

PECULIAR CHARACTERISTICS OF THE RIVER.

All know that the current has but little effect on the slopes, if the channel traverses a mountainous section and the less so, if of rocky ground since the erosion is as slow and gradual there as the centuries and does not present other variety than that of the alternate rise and fall of the waters. In order to become acquainted with the characteristics peculiar to the river, it is necessary to study them in the valley itself on the plain; because it is there that the phenomena are repeated with effect, always analogous, although at different periods and mark in a well defined manner these principal characteristics; the channel is in gravel covered with sediment and saline efflorescences; its banks are of alluvium; the bed shifts during low water between the inside banks; the channel moving and being deeper during the floods; its general course capricious with movable current in a porous zone of variable width; between limits that are marked where the alluvia and loose soil ends and where the ground becomes gradually more compact, solid and resistant, and presents slopes that impede all advance whatever since they generally connect with ascending declivities that are links with hills and even mountains lying in the neighborhood.

It is therefore easy to perceive that the zone affected by movements may acquire in the low-lying land such dimensions in width as to require a special study for their appreciation. Such zone varies in width here, in this valley from 2 to 7 kilometers.

The freshets and overflow being the principal factor in the movements of the river of its curves and of the freaky changes of its bed at the porous zone, it is necessary to give a brief description of same in support of what I will further on demonstrate.

FRESHETS. CLASSIFICATION THEREOF, ACCORDING TO THEIR VOLUME AT THE DIFFERENT PERIODS WHEN THEY OCCUR.

The normal volume of water now flowing in the river between the towns Juarez and El Paso bears a poor comparison at the best with what it was and has been in and up to 1885. It is a well known fact that since that time the water is taken in Colorado and New Mexico, to such an extent, and its quantity is so reduced that it becomes a mere thin thread, that can be crossed at a jump where it has not disappeared altogether.

Referring therefore to the floods and their effects, back of that date, it appears that before examining the successive changes,

I should enter into a classification of the floods as regards their volume and the months in which they occurred.

Mean level of rise (floods), at the end of March and in April,
Highest levels (freshets), May and June,
Mean level of fall (floods) July and August.

The accidental floods occur in September and never pass the line of mean level which they barely reach. In October there begins a rapid fall of the waters that reach their lowest level in December and which they keep during January and part of February. At the end of the latter month the water begins to rise imperceptibly on account of the thaw; in March the increase is more marked, and in April it nearly reaches the mean level in progressive ascendance. In view of such above oscillations (of level) I deem it important to describe somewhat the mutability of the wet section of the river-bed with the water below the line of mean level, specially so in regard to the side and banks that are most strongly attacked by the waters.

When the latter has reached its normal fall, the sides of the wet section mark a narrow zone with the deepest channel in its center. The mogotes (a kind of shrub) sand-banks and intermediate river-banks are left entirely dry; the inside-banks and the great outside-banks proper of the great river-bed lie far apart. No erosion occurs at such time. Later on, with a certain increased volume, the level of the water causes a larger zone to become saturated and the accidents and unevenness of the bed disappears successively. If a flood occurs, the water reaches the intermediate banks. As yet, there is no erosion, but if the water continues rising and the wet section becomes wider and the flood is unabated, the water reaches and washes over the lower banks and lateral spaces and finally, although slowly, reaches the great river-banks proper; this is the time when it is at mean level, and the erosion commences.

When the current, after reaching the higher levels, subsides to mean level, it has produced all the effects it is capable of, and soon after it has begun to recede the active erosion ceases and by rapid transition becomes altogether inactive for want of impetus. Those facts personally seen and observed by me on the river lead me to admit that both the active and weak erosions with which the current operates encroachments, at least between the Cities of Juarez and El Paso, do not last over five or six months at the most, each year. It is proper to bear in mind, for subsequent consideration,

that the Mexican bank, which is the one attacked, presents at the height of the level of mean waters, a thick layer of fine sand on which rests the layer of vegetable soil as ascertained by excavations made by me with the view of knowing the materials of which the subsoil is composed.

EFFECTS AND EROSIVE ENCROACHMENT BY THE FRESHETS.

By studying closely the topography of the locality, the nature of the ground of the river-bed, the porous layers which cover it and the direction of its inclination, it is easy to discover the causes of the successive changes and movement of encroachment of the river towards Juarez. And since the great freshets constitute the principal factor in the above, it is but meet to describe the effects for the better support of this thesis.

The moment the rising volume of water begins to wash the foot of the slope of the exterior bank, a little before reaching the mean level, the filterings and the capillarity act in the manner of gigantic injectors and conduct rapidly the moisture by the subsoil in its lateral extensions. Subsequently, when the water is higher than said level, the upper layers of sediment, vegetable earth and alluvium are in turn and by virtue of their porosity, saturated with moisture and lose thereby their cohesiveness; and as the layers of sand lying immediate thereto and on which they rest do not prevent solidity, the ground gives way producing fissures that, the nearer to the bank walls, the wider and deeper they are. The water, with its sapping power undermines the lower slopes and then thick blocks of ground are made to fall, which are swept away immediately. If the strong current continues and reaches a higher level, an overflow occurs; the water is forced out of its channel by reason of continuity, and overflows the banks causing an inundation.

We have before us the phenomenon of a strong freshet: the fissures are filled up; the ground near by is converted into deep mire and since it no longer offers resistance, is carried away. Such more elevated parts as have not been flooded give way also, by sinking while at other near points of the banks, immense blocks collapse falling in one body and are swept off. Trees, houses, cultivated parcels of land and all obstacles and obstructions of whatever kind are made to disappear by the irresistible force of the formidable flood. When the water subsides the approaches begin to dry up; the soil contracts, the fissures appear

and subsoil is miry; then the erosive action on the steep walls, throws down large parcels of bank-walls, that fall in great heaps into the water.

Such destruction, such encroachment produces an accretion further down on the opposite bank, which consists of new soil, by depositing there the alluvium and sediment of the bank wherefrom torn. While it is true that such above depicted great floods are exceptional and consequently infrequent, yet the last ones of the kind occurred and are well remembered by the inhabitants of both places, operated a large encroachment on Juarez, destroying property in its quarter known as "Chamizal".

Generally the epochs of abundance have been followed by others of scarcity of water and the river, in its successive changes, has been subject alternately to those of variable activity and stationariness with its bed on the same places traversed from 1827 up to date.

ADVANCES OF THE BED. THE RIVER BED IN 1827.

I refer to the trace-copy of its localization taken by the Engineers of the American Commission from a map in possession of Mr. P. F. Edwards. It has been already stated in the geological description of the valley that the channel of the river is narrowed in passing by the dam hills and that it continues to the South-East, with easy descent, until it enters the open valley touching the Western part of the City of El Paso, Texas.

The bed on traversing the continuation of San Francisco Street, at a distance of 1000 meters from the corner of "Central Block," makes its first curve, turns to the East and enters what is now the city. In the crossing of Second and Santa Fé Streets it describes another curve which is a very soft one and arches gradually to the North-East, passing at 100 meters South of the present Court House of the County, turns farther on to the South-East and goes on describing curves of capricious forms. (See the copy herewith.)

THE RIVER IN 1852 BOUNDARY.

Its localization as it appears in Sheet No. 29 of the collection of Commissioner José Salazar Ylarregui.

Having determined the bed of the river of 1827 as above, I will now describe briefly the localization of the river as boundary line in 1852, as it is necessary to describe the advances between the two periods. The current, descending from the dam hills as

already said, effected its first change in direction by making a curve at a point of the continuation of Fifth Street, distant about 700 m., or exactly 765 meters, West South-West from the crossing of said street with El Paso Street; thence Easterly, inclining obliquely to East South-East past where is now situated the Atchison, Topeka and Santa Fé Railroad Station, or with precision, with its left bank 25 meters and its right bank 105 meters South from the warehouse of said station. Thence South of the corner of Ketelsen and Degetau's house with its left bank 80 meters and the right bank 220 meters distant therefrom. Thence South of the crossing of Stanton and Seventh Streets, with its left bank 35 meters and the right bank 200 meters distant therefrom, and, finally, South of the crossing of South Campbell and Seventh Streets, with its left bank 85 meters and the right bank 245 meters distant therefrom. Thence it turned with a soft curve to the North-East and continued in such direction until it described below, various turns and bends.

ESTIMATION OF THE ADVANCE.

From the first curve of the river in 1827, after leaving the dam, up to the similar curve in 1852, the estimated distance on the right bank is 800 meters in round numbers. The estimated distance between the two beds in the direction and axis of South Campbell Street is 825 meters also on the right banks. As there are no data to take as basis for the computation of the period in which the change actually took place we will have to accept the dates when both localizations were established (according to the maps, there is an interval of 25 years) and 800 meters in 25 years give an annual advance of 32 meters.

THE RIVER IN 1873.

On the map accompanying this report, the bed in 1873 is localized, which map was made by the American Section of this Commission, from the notes and map of J. W. Tays that are extant at the Surveyor's Office of the County and City of El Paso, Texas. Without entering into a description of the bed of the river, at the time, I will avail of the graphic localization in order to estimate the advance of the river as compared with 1852. Separation of the right banks on the alignment of Stanton Street 425 meters. Separation of ditto on the alignment of South Campbell Street 400 meters. Average, 413 meters in 21 years. Annual Advance 20 meters.

THE RIVER IN 1889.

Its graphic localization was taken from a traced copy of the official map of the City of El Paso, Texas, signed and sealed by the Mayor of said city.

Let us compare the years 1852 and 1889 in order to arrive at the advance.

Separation of the right banks, in the direction from the Topeka and Santa Fé to the upper bridge of the tramways, 520 meters in 37 years.

Annual advance, 14 meters. Repeating the estimation, on the alignment of South Campbell Street, there would result 550 meters.

Annual advance about 15 meters. So far, only the region fronting the bridges has been considered, but in order to bring in the series of results given by the ordinate of the curves, we will proceed to set them down. Beds of 1827 and 1852: Separation 850 Ms. in 25 years. Annual advance 34 meters.

Beds of 1852 and 1895: Separation 1400 meters in 43 years; annual advance 32.57.

RESUMÉ OF THE SERIES.

Advances opposite the bridges:

1827 to 1852 separation per year	32.00
1852 to 1873 separation per year	20.00
1852 to 1889 separation per year	14.00
1852 to 1889 separation per year	15.00
	81.00
Annual advance opposite the bridges:	20.25

Largest ordinates between the great curves.

1827 to 1852 Greatest separation	34.00	per year,
1852 to 1895 Greatest separation	32.56	per year,
1852 to 1889 920 meters in 37 years	25.00	per year
1827 to 1889 1670 meters in 62 years	27.00	per year
	118.56	
Average :	29.64	

Or in round numbers an advance of 30 meters per year.

It is to be borne in mind that, as the destruction of the banks is next to none during six months in each year, for the reasons herein above set forth, the average of 30 meters obtained as above must

be duplicated, i. e., the definitive figure of the annual advance is 60 meters. Nor must it be forgotten that said average is the result of calculation upon fixed suppositions while the periods of exceptionally large floods on the one hand and on the other hand, those of continued droughts constitute excessively irregular transitions that interrupt the slow and gradual successiveness assumed for the foregoing estimate.

In confirmation and support of the stationariness, I will state that the localization of the river-bed in 1881 as per the notes and map of A. M. Randolph, in the keep of the County Surveyor, differs but very little from that of 1889 in the portion above the bridges—a true traject where all the changes and advances were initiated.

The map shows also that the third survey made to mark down the Ponce property, follows the meanders of the river-bed; which survey was made in 1872. Comparing the meanders with those of the bed in 1873, it will be seen that no perceptible changes occurred.

CONFIRMATION OF ABOVE FACTS.

The surveys for the demarcation of the concession of land granted unto Ponce confirm the series above calculated.

The report made by Major Ernst to his Government confirms the intermissions during the time of drought and of variable floods, as it refers to the irregular movement of the waters.

The American Commissioner made a proposition that was accepted by the Joint Commission of noting on the map of reference the perimeter of the land granted to Ponce and it was done accordingly; appearing on the map between the blue lines.

The first survey of said property, according to the data produced was made in May 25th 1853 by W. S. Diffendorffer, Surveyor for the District of El Paso, who obtained an area of a little more than 599 acres.

The second survey or rather the re-survey, was made on the 8th of February 1859 by Mr. Anson Mills then Special Surveyor for the District of El Paso and Presidio, who obtained a surface cypher of 637 acres; or an increase of 38 acres. Although Mr. Mills considers such increase as an accretion, it is possible that the increase is the result of having run the lines on dry shores. Diffendorffer's survey was made in a month during which the water has its mean ascendant level, while that of Mr. Mills was made when the waters are far from the banks and occupies the centre of the channel, and possibly without steep and old banks—which is the

characteristic of the abandoned ground on the left side of the river in its advances upon Juarez. The accretion to Ponce's land with a width of 21 meters mentioned by Mr. Mills requires a better supported demonstration, in order to accept it as real and positive, without room for doubt.

As to the strip running to the river, increased longitudinally by 1340 varas and which gave 1423½ at the re-survey, or an increase of 83½ varas it may demonstrate two facts: That at the extremity, on the shore, there was a bend either left dry or of quite local accretion; or, that if the strip was increased by 83½ varas, the area of Ponce's land could not contain 637 acres, and consequently the figure 38 of accretion would have to be changed considerably in order to preserve the relativeness. Leaving aside that supposition which may be possible as a fact, or groundless if the accretion be proven, I must bear witness to the rectitude and honorableness of the surveyor and doing justice to the exactness of his operations, I will proceed to enter into some other considerations, admitting his figures as quite correct.

The 83½ varas or 70 meters, in which said line increased, distributed into 5 years, give 14 meters per year or an annual advance of 28 meters.

The third survey made substantially to mark Ponce's property containing two "Caballerias" or little less than 216 acres as per the data given, was made on the 18th of November 1872 by Joseph Wilkin Tays, County Surveyor of El Paso and serves to prove that up to the year 1885 the river had advanced toward the South, from a point opposite the Santa Fé Railroad Station, 170 meters in 12 years which gives 14.16 meters per year or an annual advance of 28.32 meters, a figure that bears proper relation with the result as above.

Finally, as a proof of the irregularity of the repeated movements and energies of the river that dispels all idea of a uniform continuity and the slow and gradual advance which is attributed to the river, I make free to insert now the estimate made by Major Ernst at the end of his report on the river and from which I will give later on, an extract, to-wit: "The maximum distance between the shore of 1855 and that of 1885 is about five-eighths of a mile, and the total area added to American territory is about 490 acres."

Therefore the five-eighths of a mile give 1005.87 meters and these divided in 30 years give 33.53 per year, or an annual advance of 67.06 meters.

It will be seen that all the above figures agree with the series and that the average thereof (as on the reverse of page 11 hereof) prove the irregularity in intermission of violent action and in the cessation of energy.

In support of those often repeated facts, of which every one who knows the region is aware, I proceed to insert an extract of the report of Major O. H. Ernst of the U. S. Corps of Engineers, whose impartiality in the estimate of and the exactness with which he sets down the characteristics of the river do not permit any doubt as to its variableness and as already said, does not allow of any conception whatever of a uniform action of the water; and, consequently, of a slow and gradual action (in its effects) on the advance to the South.

True copy of the English Text.

Extracts from the Report of Major O. H. Ernst, of the U. S. Corps of Engineers.

"Leaving a rocky gorge just above El Paso the Rio Grande issues into an alluvial plain some 5 or 6 miles in width, through which it flows in a bed of its own formation. The banks and bottom are of light earth and sand, easily moved by the currents. The river is a silt-bearing stream carrying at times an excessively large proportion of solid matter. At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry. During the Spring freshets the water sometimes rises to a height of from 9 to 10 feet above the lowest, and flows with a rapid current heavily charged with sediment. At such times it possesses great building as well as destructive power. Between these two extremes there are at different seasons all degrees of volume and velocity. The size and character of the stream are ever varying, and its requirements as to form and dimensions of bed vary equally. The river's work of altering its bed to suit the necessities of the moment is never ending. The bed as it happens to exist now is the final resultant of all efforts of the stream, some of which have neutralized and some have aided each other, but the bed is not fixed. It is shifting from one position to another, altering its course, eroding one bank and building up the opposite one, forming islands and bars and then destroying them. The result of the natural changes is most noticeable in a bend where the erosion of the concave shore is sometimes continuous for many years, as appears to have been the case at El Paso. The location of the river at this place as it was found in 1855, is shown in black upon Plate I, which is an enlargement of a portion of sheet 29, United States Mexican Boundary Survey, furnished me with your letter of instructions. Upon the same place is shown in red ink the location of the stream as it was found by Mr. Garfias, the Mexican Engineer, in 1885. It will be observed that between those dates there has been a very considerable encroachment upon

Mexican territory, with a corresponding advance of the American shore. The maximum distance between the shore of 1855 and that of 1885 is about five-eighths of a mile, and the total area added to American territory is about 490 acres. I have been unable to learn whether this movement has been continuous throughout the thirty years, or whether it has been intermittent."

It is therefore plain that Major Ernst admits frankly all the following facts: That during the lowest stage the water ceases to flow and becomes reduced to pools and even disappears in toto. That with the first rains of Spring, the level rises to 9–10 feet above low water, and that it acquires at that time great power of effectiveness in destruction and accretion. That the capacity and character of the current are subject to incessant changes as also the form and dimensions of the channel. That its work in operating changes of channel, in order to adapt itself at all times to the necessities of the moment is endless. That the effect of all changes is notably marked at the curves because it corrodes and undermines with more energy the concave side and, at times, continues such work for several years successively, this having happened at El Paso, as he believes. That between the channels of 1855 and 1885 there is the respectable distance of five-eighths of a mile, which goes to show the depth of the advance upon Mexican territory with a corresponding accretion to the American side, which is estimated by him at a little less than 490 acres. It is to be inferred therefore, that if it does not corrode at times of drought nor has a constant volume of water with which to operate uniformly; that if the capacity and character of the current are subject to incessant changes, and since there are periods in which it dries up completely, while at others it has floods that operate rapidly, the slow and gradual advance is an impossibility.

The above is another proof that confirms the violent advance at irregular periods. There is no slow and gradual erosion, because the river has no fixed regimen.

I proceed to copy the following from Engineer Garfias' "Project for the works of defense on the Rio Bravo in front of the town of Paso del Norte".

"As is known the regimen of a river is the relation which exists between the transverse section, the longitudinal slope, the nature of the bed, and the volume of water. It is said that this regimen is fixed when these relations are constant, or change insensibly at long intervals of time. This regimen is, on the contrary,

variable when the relations expressed are subject to changes which recognize various causes. It is sufficient to glance at the accompanying map to be convinced of the irregularity and inequality of the tranverse sections, and if this map is compared with those of anterior epochs, it will be seen how much the course of the river has changed, invading a great extent of land on the South, and widening in all the part which remains in front of the town of Paso del Norte. Now, if the transverse sections are so variable, and if the course of the river changes so easily, augmenting the development of the line, and consequently modifying the longitudinal slope, the regimen of the river cannot be fixed at this place. The volume of water also is very variable.

"Not only is this manifested by facts in a passage of time sufficiently great, but this may also be deduced from the relation which exists between the volume, the velocity of the current, and the section; for these last being variable, the volume will also vary.

"The velocity may be deduced approximately from the nature of the matter deposited in the river's bed by the following table:

A current of one-quarter foot per second carries fine clay,
A current of one-half foot per second carries fine sand,
A current of three-quarters foot per second carries coarse sand,
A current of 1 foot per second carries fine gravel,
A current of 2 feet per second carries coarse gravel,
A current of 3 feet per second carries a stone as large as an egg,
A current of 5 feet per second carries a stone as large as 2 ft. sq.

"In the bed of the river are found all these materials, which shows that the lighter matter has been deposited in the dry season when the velocity of the current is reduced to the minimum" and that the heavier one has been swept by the flood.

The above proves scientifically, that the river has all of the characters herebefore mentioned. And, since it does not have a fixed regimen, its corrosive work, which is subject to the irregularities of the periods of action—that are always different—can not be slow or gradual.

Having proven sufficiently in principle, that the river can not have made its advances upon Mexican territory in a slow and gradual manner, but, on the contrary, by demolitions more or less violent of the right bank, at periods with unequal intervals, since the floods are not subject to a cyclic periodicity, I will now proceed to demonstrate that a few floods must have sufficed to change the river bed from where it was in 1852 to where it was in 1889—the last localization being the one of most advance to the South.

I know through personal observation of mine, that when a freshet comes that passes and remains for some time above the mean level mark, the destructive effect is active and very much

so when reaching the highest mark and persisting in the work for at least 40 hours which may be confidently distributed, as regards the work as follows:

Rise 9 hours: Corroding or sapping the layer of sand near mean level and thus bringing about the consequent sinking of the superposed soil or ground.

Above mean level mark; 14 hours: Destroying with its pressure and saturating the layers of vegetable earth that, for want of cohesiveness, give way and fall in the shape of "slices" that are swept off by the current.

Fall, 7 hours: At heights near the mean level, operating in the same manner as when rising, but with greater energy, on account of the saturation of the layers of ground.

Recess 10 hours: At the height of the sand layer; producing analogous effects, although of less violence. At this stage, the surface of the ground becomes fissured through the exsiccation; the subsoil is completely impregnated and the layer of sand that serves as base contracts on account of the draining of the water that saturated it. The approaches to the steep bank continue crumbling in layers of more or less thickness until cessation is reached through the abatement of the liquid mass.

Total of rapid action 40 hours.

TECHNICAL DEMONSTRATION. LAST PROOF.

I will finally prove, by calculations, that an extreme flood or an ordinary large one is capable of encroaching 60 meters in 40 hours.

The average of the wet section in the rectilineal traject below the dam, at times of ordinary large flood is:

Upper width ..... 73 meters,
Width at bottom ..... 25 meters,
Depth ..... 1.80 meters,
Descent per meter 0.00041
Hydraulic radius $\frac{a}{p} = R$ 1.1867
Wet section $= A$ 88.20
Wet perimeter $= P$ 74.32

Let n be a coefficient of the friction of the liquid at the channel, which according to the tables of Ganguilet and Kutter is -0.025, consequently $\frac{I}{n} = 40.00$. Take $C = \sqrt{\frac{I}{c}}$ as constant coefficient, inde-

pendent of the form, dimensions and friction at the channel; it has been arrived at through many experiments but Kutter has determined it by means of the formula named after him. With said data I will, after obtaining C, get at the velocity of the current which is not known by me, for want of personal observation at times of ordinary large floods.

The velocity will be arrived at through this formula:

$$v = \sqrt{\frac{1}{c}} \quad \sqrt{RS}$$

S representing the relativeness of the descent 0.00041, as above said. The coefficient $C = \sqrt{\frac{1}{c}}$ is given by the Ganguilet and Kutter formula which is:

$$c = \frac{23 + \frac{0.00155}{S} + \frac{1}{n}}{\left(23 + \frac{0.00155}{s}\right) n \over 1 + \frac{}{\sqrt{R}}}$$

Applying the values there results $C = 41.33$ and in consequence $v = 0.911657$ (mean velocity).

Now let us arrive at quantum of movement that the liquid mass develops with that velocity: Let M be the mass of the liquid and thence $Mv = \frac{Pvt}{g}$ or $F = \frac{Pvt}{g}$ (1). P being the weight of the water = 1.00; t – time = 1 sec.; g – gravity 9.40; F – force of pressure. Applying the values to the formula (1) we obtain Pressure = 513¼ tons per 1 minute but as the pressure does not operate normally because it acts upon the first bend, where the river turns to the West describing a curve that value must be multiplied by 0.68 or be it what corresponds to the impact at an angle of 45° at which it strikes the bank.

The pressure is therefore of 349 tons per minute.

For the want of data and tables of coefficients for the various kinds of earth and the matter being too complex, it is not possible to calculate the moment of inertia; but, in order to give an idea as to the equilibrium, I will figure as follows: One cubic meter of dry vegetable earth, intermixed with dry argil weighs 1600 Kilos. To resist that pressure a prism is required with a base equal to the wet section of the river, with a depth of 2.47 meters of the same compressed earth, the tenacity of which I do not give, because unknown to me.

The prism must be of 218 cubic meters in order to weigh the 349 tons of pressure and resist it during one minute. Thence the inference, save and excepting the possible different result if I could apply the coefficients, that the river under certain conditions may destroy the steep banks at the rate of Ms. 2.47 per minute: It may be much more or much less, depending on how the banks lie, or of the direct or neutralized currents and of various other complex circumstances, among them, the saturation and the variable filtrations in the layers of sand of the subsoil.

As estimated by many residents on both sides of the river and also by me it is not excessive to figure the destruction of the banks at 1.50 meter per hour, during the highest stage of a large flood. And accepting the estimate as a very prudent average, which it is, we find that the river may advance and has really advanced 60 meters in 40 hours. It is seen that the calculations support and confirm my reasonings. In view of the values obtained as above, it would not be strange if the river had only required eight large floods for the change from where it had its bed in 1852 to the one it now has in 1896, as it is a possibility. With the calculations and judging the facts from that point of view, the annual average assumed above is conjectural as the irregular intermissions only allow it to be accepted as a preliminary one with which to arrive at positive facts susceptible of proof.

FINAL CONSIDERATIONS.

The works of improvement at El Paso, Texas, in levelling the streets and paving them, as also those done by real-estate owners in filling up holes and evening protuberances, have caused the disappearance of every vestige of the old beds and banks. In default of noticeable traces of the former movements of the Rio Bravo, one is forced to abide by what the present configuration of the ground shows as given by the curves of levels that were observed during the operations carried out a few days ago. See the map of references. By comparing with each other the lines of greatest and least inclined descent, an exact knowledge is obtained of the direction of the descents and of the forced bed formed by the channel during the last years.

It is a well known fact that the river in its rectilineal traject below the old dam makes a bend and turns to the East describing further on, opposite Ciudad Juarez, an arc of greater or less extension with its concavity to the North. After 1852, the bend

was pushed by maxim floods and forced the river to describe arcs of successively larger radiuses at the expense of the descent and of the porosity of the sandy layers near the surface—covered by vegetable earth—which, be it said, by the by, were nearer the surface as they followed the descent, thus contributing more powerfully to enlarge the arcs in their development.

This special circumstance, which renders impossible the supposition of a slow and gradual advance of the channel facilitated admirably the free pass to inundations when strong floods occured, factors of new channels through encroachments of the bends. Because it is clearly seen that the impetuous torrent in its rectilineal course could not turn without striking the bend and impressing its natural tendency to rectification on the new curve about to be developed. Thence the forcible inference arises that every new arc had to deviate from the rectilineal course at an angle too acute by the law of impulses and rectifications—leaving an intermediate space that could not be occupied permanently although inundated by comparatively smooth waters, which had nevertheless sufficient force to carry off the light sand to the greatest distances, below, and deposit the sediment with alluvium at the higher space, nearest the vertex. Indisputable proof of a leap made by that action is the vertical cut made in the subsoil at A, B (See the red line on the map of reference) and the course of the channel in 1852 as shown by the curve levels, which is localized at the crossing of Seventh and South Campbell Streets and the yard of the Texas and Pacific Railroad Station. This track of the channel could not have been impressed so much on the ground, if the river had advanced by slow and gradual erosion, without evening the undulatory relief of the right bank and leaving a uniform surface.

Supported as I am by that incontrovertible fact, and taking into account all the reasons, arguments, and proofs above set forth by me, which are confirmed by irrecusable persons, comprobating the estimate of the violent action of the river, I arrive finally at the following:

CONCLUSIONS.

First. The Rio Bravo del Norte, upon abandoning its bed in 1852 advanced to the one it had in 1895 and which it now has in 1896, by violent and direct breaks on the bend from the rectilineal course and by leaps in the curves it assumes opposite Ciudad Juarez, leaving the old channel to enter the new one.

Second. The violent breaks and the leaps took place at intermittent periods of unequal intervals.

Third. The encroachment cannot have been effected in a slow and gradual manner.

EMILIANO CORELLA

C. JUAREZ, *May 26th, 1896.*

[Joint Journal.]

C. JUAREZ, MEXICO, *July 10th, 1896.*

The Joint Commission met at the office of the Mexican Commissioner at 8 A. M.

The United States Commissioner stated that the report of the Mexican Consulting Engineer covering 74 pages of manuscript, apparently raises new issues requiring testimony in rebuttal, and in justice to himself he desires these facts to appear on record in the Journal.

From its extreme technical character he was only yesterday able to have the translation completed, but he has read it with care and will now state the points on which he proposes to introduce testimony in rebuttal, unless the Mexican Commissioner is willing to admit what he proposes to prove.

First. On page 22 of the English translation, the Mexican Consulting Engineer is mistaken or at least has very much exaggerated, when he says: "The works of improvement, leveling the streets and paving them, as also those done by real-estate owners in filling up holes and leveling protuberances, have caused the disappearance of every vestige of the old beds and banks".

As a matter of fact there are little or no improvements along the location of the river of 1852, and save at the crossing of El Paso and Santa Fé Streets no leveling or paving has been done. The United States Commissioner asks the Mexican Commissioner to admit this fact or allow him to prove it.

To which the Mexican Commissioner replied that he would admit the facts as stated by the United States Commissioner, the more so as his Consulting Engineer states that he did not refer to the old bed or banks of 1852.

Second: On page 23, if the Mexican Engineer intends to imply that the contour lines on his map of reference[a] indicate in any manner, evidence of an old abandoned river bed, the United States Commissioner is prepared to prove that the depressions

[a] [See portfolio Map No. 5, Agent's note.]

there indicated along the canal on Eighth Street between Santa Fé and Ochoa Streets (as he stated in the Journal of May 30th) were caused in May 1891 during a high flood by the Mexican Jetties forcing the current against the United States levee below Eighth Street and breaking it (the levee) for some 75 yards carrying a great portion of the volume of the flood waters through and down the canal on Eighth Street, tearing away the four railroad bridges at Santa Fé, El Paso, Stanton and Kansas Streets, and for weeks scouring out the depressions there shown. The United States Commissioner asks that the Mexican Commissioner admit the facts as stated or allow him to prove them.

The Mexican Commissioner replied that he would admit the facts as stated by the Commissioner for the United States.

The Mexican Commissioner wished it to go on record that his Consulting Engineer assisted at the meeting and approved of the explanations made on his report, to which the United States Commissioner assented.

The United States Commissioner here notifies the Mexican Commissioner that he shall set up in his argument, for what they may be worth to those having the further consideration of this case, the following facts of such public notoriety that he has not considered it necessary to adduce proof of them.

1st. That for 42 years, namely, from 1852 when the boundary was established by Emory and Salazar, until January 23rd, 1894, when the petitioner in this case, Pedro Y. Garcia, filed his petition, no claim was ever officially made or asserted to any part of the land in dispute either by Mexican authorities or by any Mexican citizen thereof, but that the United States held undisputed authority over the land on the left bank of the river to its deepest channel opposite Juarez continuously during its Southward movement.

2nd. That the two governments by proper authority, about 1884 granted to the El Paso Street Railway Company, a chartered company in the United States (to the center of the Rio Grande) and the "Compania del Ferro Carril Urbano y Puente del Paso del Norte", a chartered company in Mexico (to the center of the Rio Grande), a charter to construct an international bridge across the Rio Grande to connect said roads from bank to bank, and that about the same date a similar charter was granted to the El Paso and Rio Grande Railroad (A. T. and S. F.), a corporation in the United States and the Mexican Central Railroad, a corporation in Mexico, to build an international bridge across the Rio

Grande to connect these two roads from bank to bank of said river, and that later on, namely, about 1888, another similar charter was granted by the respective governments to build an international bridge across the Rio Grande to connect the Santa Fé Street Railway Company, a corporation in the United States, with the "Compania Ferro-carriles Urbanos de Ciudad Juarez", a corporation in Mexico, and that all these bridges were constructed soon after the date of their charters, and the ends of all said bridges on the right bank have been since maintained under the jurisdiction of Mexico, and those on the left bank under the jurisdiction of the United States.

3rd. That the custom officers of each nation have habitually since 1852 maintained the custom guards continuously as the river moved; to the channel of said river and since the construction of the street-car bridges each Government has maintained an office with a custom officer at their respective ends of these bridges.

The Mexican Commissioner replied that he admitted simply as a matter of fact the three points to which the United States Commissioner refers; but he states at once for whatever it may be worth that not one of these three facts, even perfectly proven, oppose the right of the Mexican Government to claim part of its territory under the Convention of 1884, a solemn international treaty whose validity can not be impaired by any of the facts stated by the Commissioner for the United States.

The United States Commissioner here stated that as the Chamizal Case, No. 4, now appeared to be finally closed as to investigations of every name and nature, and as it was apparent from verbal discussions that the Commissioners would not be able to agree, and that as Mexico was the complainant, he had to request that the Mexican Commissioner present his reasons clearly and distinctly for non-agreement, and that he would reply in like manner to the end that those who may have further consideration of this long, and so far, fruitless investigation may fully understand and take advantage, to the full extent of our respective labors and conclusions.

The Joint Commission then at 11:30 A. M., adjourned to meet to-morrow, the 11th instant, at the office of the United States Commissioner at 11 O'clock A. M.

ANSON MILLS
JOHN A. HAPPER
F. JAVIER OSORNO.
S. F MAILLEFERT

[Joint Journal.]

EL PASO, TEXAS, *July 13th, 1896.*

The Joint Commission met at the office of the United States Commissioner at 11 O'clock A. M., the meeting scheduled for the 11th instant not having taken place.

Thereupon the Commissioners entered into the discussion of Case No. 4, "El Chamizal"; and, as it treats of a reclamation presented in behalf of Mexico, the Mexican Commissioner was the first to address, in order to demonstrate that the change operated by the River Bravo since 1852 up to date ought not to alter—adhering to the meaning and letter of the Treaty—the primary boundary line established by Messrs. Salazar and Emory, because, as he believes there is not the least doubt that said change or rather changes were due to the force of the current's water, that are excessively violent in this river at the time of floods, and not to the *slow and gradual* erosion expressly laid down in the solemn international compact existing between Mexico and the United States. The American Commissioner, not conforming to the opinion held by the Mexican Commissioner, adduced arguments to the contrary; and, thence arose a long discussion that was protracted for more than five hours and which, unfortunately, was fruitless, notwithstanding the best endeavors of both Commissioners to arrive at a concurrence alike decorous and equitable to the interests of the two Nations they represent. In view thereof both Commissioners decided to submit each one of them their report to their respective governments, not without first setting forth in compendium in this Journal the arguments adduced by each in support of their opposed views. The cardinal arguments brought forward by the Mexican Commissioner can be embodied in the following points:

1st. That the Treaty in Article I imposes as a condition *sine qua non* for the non-alteration of the boundary line through any change of the River Bravo, that "such change be due to *slow and gradual erosion,*" and that any other change—as a general rule—occasioned by the force of the current shall not bring about the alteration in any way of the boundary line, such as established by the surveys of the International Boundary Commission of 1852. Related as these two articles are with each other, every international question as far as the case at issue is concerned, is embraced by the following syllogism:

Major: Any change other than *slow and gradual* does not alter the boundary line.

Minor: As a fact, the change of the river in the case denominated "El Chamizal" was not slow and gradual, but on the contrary violent and at periods of time of unequal intermissions.

Conclusion: Hence the change of the river on lands of "El Chamizal" does not alter the boundary line marked in 1852.

The major proposition of that syllogism is evident in itself without necessitating other proof; and if the Mexican Commissioner should be able to show the truth of the minor one, the American Commissioner can not but submit to the force of logic, of the conclusion. Proof of the minor proposition.—In order to demonstrate the truth of same, it is proper first of all to agree as to what must be understood by *slow and gradual corrosion* and he accepts at once, as good, the definitions which Webster gives in English, of the following words: "Corrosion—the action or effect of corrosive agents, or the process of corrosive change; as the rusting of iron is a variety of corrosion." "Slow—moving a short space in a relatively long time; not swift; not quick in motion; not rapid; moderate; deliberate; as a slow stream; a slow motion." And in the second acceptation of "*slow*" there are found these words that are suitable and adjustable to the case in point and must be borne in mind continually: "not happening in a short time; gradual; late." "Gradual—Proceeding by steps or degrees; advancing step by step, as in ascent or descent or from one state to another; regularly; progressive; slow; *as gradual increase of knowledge;* gradual; late."

Having defined what has to be understood by slow and gradual corrosion, the Mexican Commissioner affirmed that judging from the depositions of all the witnesses that were examined, from the inconstant and mutable character of the River Bravo, at the region in which the disputed land lies, and from the topographical configuration which that same land preserves as yet, the change of the bed which the Bravo occupied in 1852 to the one it now has, with a different channel, is not, nor can it have been, slow and gradual as is hereinafter demonstrated.

Testimonial proof: The declarations of all the witnesses are unanimous upon these points, that the change or changes of the river have always occurred at the time of great floods and due to the force of the current; that such changes even when happening do not occur year by year, in a gradual manner; but capriciously and at indeterminate periods as for instance; the river did not change at all, or changed imperceptibly in a period of twelve years, say between 1852 and 1864; whereas from that last year

on up to 1868 an epoch of great and terrible inundations, there occurred the greatest change as ever was operated in the bed of the river. Here follows how all the witnesses testified in that regard:

Jesus Serna, the first one examined by the Joint Commission testified that "In 1854 there was a *large flood* but in 1864 there was a noticeable change. The *change was violent* and destroyed trees, crops and houses."

The second one, Mr. Ynocente Ochoa who, on account of his wealth and honorableness is one of the most respectable persons of Ciudad Juarez, said: "From 1858 to 1860 there were some small changes; the largest change took place in 1864 when the *dam was destroyed;* the *principal change* was in 1864 but since then the changes have been small". (Journal of April 14th.) "The largest change *was violent* as I have already stated and took place in 1864." (Proceedings of May 14th.)

The third witness, Mr. Espiridion Provencio, one of the most prominent real-estate owners of Ciudad Juarez and who has held important public—offices, affirmed: "The first *noticeable* change of the river occurred about the year 1864." "I can not appreciate what is meant by slow or violent, but sometimes as much as *fifty yards* would be washed away at certain points in a day." (Journal of April 14th.) "When the river made the alarming change *it carried away pieces of earth one yard, two yards* and constantly in intervals of a few minutes. At the time of these changes, the people would be standing on the bank watching a piece going down, and somebody would call: Look out! there is more going to fall, and they would have to jump back to keep from falling into the river." "This work of destruction *took place only during the great floods.*" "In 1864 owing to a deviation which the river had at the dam heretofore referred to, running entirely towards the Mexican side, it sent the current towards the American side in an impetuous manner against a stone bank which now exists a little below said dam and thus the recussion of said shock returned the current precipitously towards "El Chamizal," now Mejía, this being the cause of the lands and houses being carried away; there have been cases of many persons having been unable to save their personal property." (Journal of April 20th.)

The fourth witness, Mr. José M. Flores, a well-known and reputable merchant and one of the oldest residents at El Paso and Ciudad Juarez, who, besides, was presented by the American Commissioner asserted "That between 1864 and 1868 the current

came with *such violence* that houses and fields were destroyed." "If the river changed between 1852 and 1864, it was not much, but imperceptibly." "Some years it had no effect; there was not enough water to make a change and some years it would change considerably, *according to the stage of the water.*" (Journal of April 16th.)

The fifth witness, who was presented also by the American Commissioner, was Mr. Samuel Schutz, formerly a merchant of importance and one of the oldest residents of El Paso, Texas. From his testimony it appears: "It changed opposite the city here, but more so a little below here, until up to 1864. We had a big flood then and rise in the river and it worked more on the Mexican side and undermined the banks more than in any previous years since I lived here in El Paso." "The currents that came between 1864 and 1868 were *with such violence* that houses and fields were destroyed." (Journal of April 16th.)

Mr. Joseph Magoffin, a banker of El Paso, of the utmost respectability where, with short absences, he has resided since 1844, was the sixth witness. He was presented by the American Commissioner and asserted under oath: "The river was trying to work into Mexico all the time; its natural course is that way. This *damage* to the Mexican side of the river caused by the *washing* away of the banks from Ketelsen and Degetau's down to opposite the smelter caused the river to turn and come directly towards Old Fort Bliss, my Father's place. We had there 20 wagons working from two to three months at a time to try *and keep the river from washing away the Post.* The banks on the South or Mexican side of the river were as a rule from 10 to 20 feet high down here at the Chamizal. They are all gone now or nearly so and all this accretion to the United States has been by the *washing away of the banks* and the banks falling into the river. It continued to wash away as I said before up to 1862, when I left and went with the Southern Army."

The seventh and last witness, Doctor Mariano Samaniego, a most honorable person and who has occupied high public positions in the Republic of Mexico such as Congressman to the Union and Governor of the State of Chihuahua, testified: "I have noticed that the changes *occur during the floods generally.* In 1862 there was a great flood; the river extended up to what was called Franklin, now El Paso. One could not see ordinary objects from one bank of the river to the other. Of course during the floods it did some damage but more when the river receded; the current

all the time bearing more strongly towards the Mexican side. In 1864 *the current was so strong* as to destroy the jetties constructed on the Mexican side of the river, going behind them and this prevented the river from going back to its old channel." "The changes were to *such a degree that at times during the night the river would wear away from 50 to 100 yards. There were instances in which people living in houses distant 50 yards from the banks, on one evening had to fly in the morning from the place on account of the encroachments of the river and on many occasions they had no time to cut down their wheat or other crops.* It carried away forests without giving time to the people to cut the trees down." "There are never changes during the Winter." (Journal of May 16th.)

CHARACTER OF THE RIVER.

It is almost needless to demonstrate that the River Bravo is inconstant and mutable—especially so at the region of the disputed land—since it is a fact evident to everybody. It is, however, proper to insert here the authorized opinion of two American engineers who have made a special study of the River Bravo; to-wit: Major O. H. Ernst and Colonel Anson Mills himself. Says the first named: "At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry. During the Spring freshets the water sometimes rises to a height of from 9 to 10 feet above the lowest level and flows with a rapid current heavily charged with sediment. At such times it possesses great *building as well as destructive power.* Between these two extremes there are, at different seasons all degrees of volume and velocity. The size and character of the stream are ever varying and its requirements as to form and dimensions of bed vary equally." "It is shifting from one position to another, altering its course, eroding one bank and building up the opposite one, forming islands and bars, and then destroying them." (Journal of May 7th.)

Says the second: "That while he was not ready to admit that it never had made changes in the Winter time, he had never known or heard of it making changes during that season, for the reason that high waters were seldom, if ever, known during the Winter months." (Journal of May 18th.)

Which above utterances demonstrate that the changes of the river do never, nor can they, occur in Winter, when the river "*is entirely dry* except at detached pools."

TOPOGRAPHICAL CONFIGURATION OF THE DISPUTED LAND.

By the map [a] made by the Mexican Engineer, Mr. Zayas and by the technical report of Lieutenant Colonel Corella, Consulting Engineer of the International Boundary Commission, in such part as it refers to said map, it appears that the disputed land (which lies between the bed of the River Bravo as it ran in 1852 and the bed it now occupies) far from having been levelled in a uniform manner through the soft and erosive action of the waters, as would have happened necessarily if the change of the river had been *slow and gradual*, presents a difference in levels between the Northern and the extreme Southern part of the land, the latter being higher than the Northern one (an inexplicable fact if the slow and gradual erosion were to be admitted).

Therefore, resuming all the above, it is seen that only by torturing the grammatical sense of the words and by violating the most rudimentary rules of dialectics there may be said, after hearing the unanimous testimony of the witnesses, that a river which "destroys dams"; "*tears off in a few minutes parcels of land of even more than fifty yards*"; "*runs with such a violence as to destroy houses and fields*"; "*threatens to carry away Fort Bliss*"; "*that operates great disruptions*"; "*that from night to morning sweeps off houses and everything else, without giving time to the dwellers to even save their personal effects;* "*that is only impetuous, terrible and destructive at the time of floods; and, lastly not only allays its fury but runs dry and dies out during Winter time and a part of Spring, which is nearly half the year*"; that this river, a torrential stream, operates its changes by *slow and gradual erosion.* Can the tremendous destructive power of a river, called Bravo (fierce) by antonomasia, be said to be corrosive as is the action of rust, by small degrees, upon iron until it converts it slowly and imperceptibly into dust (*as the rusting of iron*)? How can it be affirmed that the destruction within a few minutes of 50 and 100 yards of land is slow; or how can it be maintained that it is operated in a relatively long time (*moving a short space in a relatively long time*)? Who, unless blinded, can sustain any longer that a river so inconstant as the Bravo does its work of destruction *step by step* and *degree by degree*, in the manner as in the human mind is augmented the wealth of knowledge (*proceeding by steps or degrees; regularly, progressive, slow, as a gradual increase of knowledge*)? And

[a] [See Portfolio Map No. 5. Agent's note.]

would not absurdity reach the ridiculous in pretending to set down as *regularly progressive* the destructive action of a river that requires more than twelve years to change its bed, that changes it in four or five with terrific violence and is always dry half the year? Why, then, insist upon that point? What has been stated is sufficient and more than sufficient to demonstrate that the change of bed of the River Bravo del Norte, from the place it occupied in 1852 to the one it now has, was not due to the slow and gradual corrosion mentioned in Article I of the Treaty of 1884, and demonstrates the incontrovertible truth embodied in the minor proposition of the syllogism formulated above, the conclusion of which is so legitimate as to make it impossible of denial on the part of the Commissioner of the United States. All the debated question in the "Chamizal" Case may be confined within the narrow bounds of the syllogism which it is proper to reproduce in the way of conclusion.

Major proposition: Any change other than slow and gradual does not alter the boundary line (Art. I of the Convention of November 12th, 1884).

Minor proposition: Since the change of the river in the case denominated "El Chamizal" *was not slow and gradual*, but on the contrary violent and at periods of time of unequal intermissions (which has been fully demonstrated above).

Conclusion: Thence, the change of the river at the lands of "El Chamizal" does not alter the boundary line marked in 1852 by the International Boundary Commission. (Art. 2 of the Convention of 1884.)

There are many other arguments based on the Roman laws, a perpetual and never failing source of distributive justice, as well as on the Law of Nations, that is observed in and governs the international relations between civilized people. But as such arguments would be only of value as an illustration in the international matter at issue, well may they be suppressed for the sake of the brevity and conciseness with which the proceedings must be put down. Nevertheless so as to define well the terms of this discussion it is proper to quote here some definitions and legal precepts accepted in the jurisprudence of the United States itself:

Accretion, in its vulgar acceptation according to Webster, means in English "The act of increasing by natural growth; the increase of organic bodies by the natural accession of parts; organic growth." (Law) "The adhering of property or something else, by which the owner of one thing becomes possessed of a right to another;

generally gain of land by the washing up of sand or soil from the sea or river, or by a *gradual* recession of the water from the usual water-mark."

Avulsion, in its vulgar meaning is: "A tearing *asunder;* a *forcible* separation. (Law) The sudden removal of lands or soil from the estate of one man to that of another by an inundation or a current or by a sudden change in the course of a river by which a part of the estate of one man is cut off and joined to the estate of another. The property in the part thus separated, or cut off *continues in the original owner.*" "Webster".

LEGAL PART.

Here are some legal doctrines recognized and quoted by the Supreme Court of the United States in the case of "The State of Nebraska complainant vs. the State of Iowa." That case is certainly very different from the one now disputed and in which if the Supreme Court of the latter Nation declared that "Notwithstanding the rapidity of the changes in the course of the channel and the washing from the one side and on to the other, the law of *accretion* controls on the Missouri River, as elsewhere; and that not only in respect to the rights of individual landowners, but also in respect to the boundary lines between States." It was because the characteristics of that river are quite different from the Bravo and to the point the Mexican Commissioner calls very particularly the attention of the Commissioner of the United States. In the first place, and this is very important, the Missouri does not remain entirely dry for nearly half a year, but on the contrary it "is a river of the first class, navigable by steamers of heavy tonnage"; the Missouri not only does not dry as the Bravo, which is *merely a torrential river* in which the slow and gradual process of accretion is impossible, but it is a stream changing according to the seasons of the year constantly corroding its banks. "It readily and rapidly yields to the force of a current and the banks formed of it afford a very slight resistance to the changes that the rapidly flowing river is *constantly* making. The current of the Missouri River is *very rapid*, varying at different places and with the time of year and the stage of the water from five to ten miles an hour." Except in few cases the United States Supreme Court admits that the Missouri, in reference to accretion does not differ from other rivers except in the velocity of its current; but otherwise the accretion proceeds *always*—mark *always*—by *imperceptible* deposits

of particles of earth in suspension; something that does not happen in the Bravo, that does not *always* carry water and in which the changes and damages not even occur *always* nor each year" (the only thing which distinguishes this river from other streams, in the matter of *accretion*, is the rapidity of the change caused by the velocity of the current, and this in itself, in the very nature of things, works no change in the principle underlying the rule of law in respect thereto). The *accretion* whatever may be the fact in respect to the diminution is, in the Missouri, *always* gradual and by the imperceptible deposits of floating particles of earth. There is except in such cases of avulsion as may be noticed hereafter, in all matters of increase of bank, always a mere gradual and *imperceptible* process." What is to be understood by imperceptible is shown to us by this quotation: "The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it *while the process* was going on"; which undoubtedly has not happened in the changes of the Bravo in the lands of "El Chamizal" as the land, in sight of its inhabitants has disappeared with appalling violence under itself, and from night to morning, they have proven that their houses and fields have disappeared through the violence of the waters.

The complete difference of character between the Missouri about the disputed region by the State of Nebraska against the State of Iowa, and the River Bravo in the Chamizal lands claimed by Mexico, against the United States, having been shown, it is proper to quote right here the principles of International Law that are universally recognized by all civilized nations and have in the present case indisputable value, having served as foundation to the most highly respectable court such as the Supreme Court of the United States of America, whose decisions, high and wise, may well serve of universal jurisprudence and whose authority the United States Commissioner must respectfully acknowledge.

"SUPREME COURT OF THE UNITED STATES."

No. 4 ORIGINAL—OCTOBER TERM 1891.

THE STATE OF NEBRASKA, Complainant, vs. THE STATE OF IOWA. } One bill and cross bill in equity.

(February 29, 1892).

Mr. Justice Brewer delivered the opinion of the Court.[a]

"It is settled law, that when grants of land border on running water, and the banks are changed by that gradual process known as accretion the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possession may vary. But if the change is violent and visible and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates." (2 Blackstone's Com. 262; Angell on Water Courses, sec. 60; Trustees of Hopkins Academy v. Dickinson, 9 Cush. (Mass.) 544; Buttenuth v. St. L. Bridge Co., 123 Ill. 535; Hagan v. Campbell, 8 Port. (Ala.) 9; Murry v. Sermon, 1 Hawks (N. C.) 56.)

Now, that the bed of the river to-day is different from the one it occupied in 1852, and that the change was wrought with violence and due to a known cause—*the freshets* from 1864 to 1868—is a fact perfectly proven by the *uniform* testimony of the witnesses.

"These propositions, which are universally recognized as correct where the boundaries of private property touch on streams are in like manner recognized where the boundaries between states or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary but leaves it in the center of the old channel. In volume 8 Opinions of Attorneys-General 175, 177, this matter received exhaustive consideration.

"For in truth, just as a stone pillar constitutes a boundary, not because it is a stone, but because of the place in which it stands, so a river is made the limit of nations, not because it is running water bearing a certain geographical name, but because it is water flowing in a given channel, and within given banks, which are the real international boundary.

[a For full text of the decision of the Supreme Court in this case, see infra p. 1154.—Agent's note.]

"Such is the received rule of the law of nations on this point as laid down by all the writers of authority. (See ex. gr. Puffend Jus. Nat. Lib. iv, cap 7, s. ii; Gundling Jus. Nat. p. 248; Wolff, Jus. Gentium. s. 106–109; Vattel, Droit des Gens, liv. i. chap. 22, s. 268, 270; Stypmanni Jus. Marit. cap. v. n. 476–552; Rayneval, Droit de la Nature, tom. i, p. 307; Merlin, Répertoire, ss. voc. alluv.)."

From this it infers that every year when the bed of the river Bravo dries, the boundary line that follows the center of the deepest channel as laid by the International Boundary Commission in 1852 has not possibly changed. In support of this deduction here is the following quotation:

"Alameda refers to the same point, briefly, but in decisive terms. He says: As the river belongs to the two nations, so, also the the river bed, if by chance it become dry; is divided between them as proprietors. When the river changes its course throwing itself on one of two conterminous states, it then comes to belong to the state through whose territory it runs, all community of right in it so far ceasing." (Derecho Público, tom. i, p. 199).

Finally Mr. Cushing whose preceding doctrines[a] are adopted by the United States Supreme Court adds to the authorities quoted, the following, which are the foundation for Arts. I and II of the Convention between Mexico and the United States.

"Don Andres Bello and Don José María de Pando both enunciate the doctrine in exactly the same words, namely:

"When a river or lake divides two territorities whether it belongs in common to the conterminous riparian states or they possess it by halves or one of them occupies it exclusively, the rights, which either has in the lake or river, do not undergo any change by reason of alluvium. The lands insensibly invaded by the water are lost by one of the riparian states, and those which the water abandons on the opposite bank, increase the domain of the other state. But if, by any natural accident the water, which separated the two states, enters of a sudden into the territory of the other, it will thenceforth belong to the state whose soil it occupies, and the land, including the abandoned river channel or bed, will incur no change of master. (Bello Derecho Internacional, p. 38; Pando Derecho Internacional, p. 99)." And ends with the words: "Such, beyond all possible controversy, is the public law of modern Europe and America, and such, also, is the municipal law both of the Mexican Republic and the United States."

Colonel Mills, Commissioner for the United States, whose every act during his long public and private career shines with the

[a For text of Attorney General Cushings's opinion of November 16th, 1856, see infra p. 559.—Agent's note.]

brilliancy of his unquestioned honor and proverbial good faith, will not deviate a jot, as upon all other occasions, from the firm adherence he has always had to truth. It is over a year ago that said Mr. Mills, stated in writing the following:[a] "The first from El Paso to Presidio del Norte, where by reason of the greater fall in the river's current and the firmer consistency of the earth, the changes in the river's channel are *true avulsions* and clearly come within the avulsive changes described by Attorney-General Cushing in his opinion of November 11th, 1856; that is to say '*by deserting its original bed the river forms for itself a new channel in another direction*, thus forming an island, the length of which parallel to the river is many times its width and often leaving many inhabitants with cultivated fields living on it; and the nation from whose territory the river thus breaks its way, suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary.'"

The testimonial proofs and the documents lately collected, come to re-prove said opinion of the United States Commissioner, that "the changes in the channel of the river in the region from and between El Paso and Presidio are due to *true avulsions*"; and, thence, he will not have any objection to submit to what is evident and will avow loyally that it is of justice to recognize the right of Mexico in claiming that the boundary line be re-established, in the case "El Chamizal" at the center of the deepest channel which the river occupied in 1852 as shown on the maps signed by Messrs. Emory and Salazar Ylarregui.

The Joint Commission then adjourned until such time as the United States Commissioner shall have his answer to the Mexican Commissioner's arguments prepared.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Joint Journal.]

EL PASO, TEXAS, *July 17th, 1896.*

The Joint Commission met at the office of the United States Commissioner at 10 A. M., when the United States Commissioner stated that he had read the compendium of the Mexican Commissioner and submitted the following reply:

This case was brought before the Joint Commission by Mexico, September 28th, 1894, on the petition of Pedro Y. Garcia, dated

[a] [For full text of Joint Journal of Jan. 15th, 1895, from which this quotation is taken, see infra p. 1092. See also infra p. 201.—Agent's note.]

January 23rd, 1894, who stated therein that he had lost his land "In the year 1873, in which year, in consequence of the abrupt and sudden change of the current of the aforesaid Rio Bravo, the land in question was by that fact left, on the other side of said river" (see page 1 of the record), but no evidence had been adduced to show that he or any one else lost any land whatever in the year and manner specified.

The accompanying map marked "Preliminary Sheet No. 1" [a] shows the land in dispute (about 600 acres), the location of the Rio Grande in 1852, the boundary as established at that date by the survey of the Mexican Commissioner, Salazar, and the location of the river at this date according to the surveys of this Commission, with every object of common notoriety in the vicinity shown in skeleton, to avoid confusion in casual examination. Scale $\frac{1}{2000}$.

The map marked "Final Sheet, No. 2" [b] shows the same location of the land and river locations, and in addition, the two cities of El Paso and Juarez, giving in detail all that was thought could be of possible interest in the consideration of the case. Scale $\frac{1}{1000}$.

For a better understanding of the jurisdiction of the Joint Commission and the specific authority of law under which it is acting, it is proper to set them forth in cronological order.

The celebrated opinion of Attorney-General Cushing on Arcifineous Boundaries, Vol. VIII pp. 175–180 applying the common law of nations, though clear and explicit as applied to the Eastern rivers and water-washed shores of this continent, as well as to those of Rome, where they originated, from the fact that though many similar controversies arose on the Rio Grande, no practical application was made of it for twenty-eight years from the date of its delivery until the Convention of 1884, which laid down special laws "for the determination of such questions" (See preamble to this Treaty) between the two nations, it is fairly presumable that the character of the river and the interests of the two peoples rendered it both desirable and necessary that these questions should be removed from the pale of international law and be considered and determined by more simple and more definite rules of more ready understanding, easier determination, and application, by dividing the changes into two definite and distinct classes.

---

[a] [See portfolio Map No. 3—Agent's note.]

[b] [See portfolio Map No. 4—Agent's Note.]

The first, to be wrought "by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one", (see Article I of the Treaty) in which case the boundary remains and continues with the deepest channel and current through all its movements back and forth.

The second to be wrought "by the cutting of a new bed or when there is more than one channel, by the deepening of another channel than that which marked the boundary at the time of the survey, made under the aforesaid treaty", in which case or rather either case of this class, the change of current and channel "shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commission in 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or obstructed by deposits" (See Article II of that Treaty).

Then again the preamble of the Treaty of 1889 providing for the organization of the Joint Commission, the object is there expressed, "Desiring to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884," and further on in Article IV the duty of the Joint Commission is thus plainly described, "It shall be the duty of the said Commission to repair to the place where the change has taken place or the question has arisen, to make a personal examination of such change, to compare it with the bed of the river as it was before the change took place, as shown by the surveys, and to decide whether it has occurred through avulsion or erosion, for the effects of Articles I and II of the Convention of November 12, 1884."

And further, from the agreement of the Commissioners in their Journal (See page 7) that "The whole question before the Commission is whether or not the river in its passage, moved over the land by gradual erosion from the Mexican bank and deposit on the United States bank as described in Articles I of the Treaty of 1884, or by sudden avulsion by cutting a new bed, or deepening another channel than that which marked the boundary," and from all the foregoing it seems clear to the United States Commissioner that the Joint Commission is acting wholly and exclusively as to jurisdiction, under the authority conferred by the before-mentioned treaties of 1884 and 1889.

As to the definition of a very important word in the treaty used by the Mexican Commissioner, it is to be observed that entirely

different words according to English definition, are used in the English and Spanish translations; that in the English being erosion, and that in the Spanish corrosion.

These words in English though of similar significance, are not by any means synonamous, especially as intended to be applied here in a geological sense. The word corrosion is principally applied in English to the action of acids on metals, in which sense the word erosion is never used. Webster gives erosion a geological sense as applied to the "Erosive theory or hypothesis" and the Century gives "Erosionist—In geology—One who holds to the erosive theory," and gives this example of erosion, "The great erosive effect of water on the clay soil of the West." "Science III–214."

As I cannot find any instance of the use of corrosion in a geological sense, I conclude that erosion in a geological sense was intended by the framers of the treaty, especially when taken in connection with its conjoined word deposit Article I of the treaty of 1884, for so long as the erosion of alluvium is not so great as to so fully saturate the water as to prevent its ability to carry it in solution for deposit, when the water becomes sufficiently still; the two words seem to serve the meaning intended by the authors.

As to the term "slow and gradual," the eminent Civil Engineer Vernon-Harcourt in his scientific treatise on "Rivers and Canals" says: "Rivers besides carrying rain-fall to the Sea, are also the transporters of alluvium. Gradually, though slowly, all rivers are bringing detritus down their valleys and the materials of the mountains are being carried to the Sea." (See page 12, Vol. I.)

This author uses the two words together in exactly the same sense that the United States Commissioner claims they were intended by their authors in the Treaties, with reference to the alterations of the banks of the Rio Grande. To be slow and gradual need not of necessity be constant and uniform in ratio of time but may be intermittent wholly, or unequal in degrees, or steps of progress, as in the case cited by the Mexican Commissioner on page 8, "as in the human mind is augmented the wealth of knowledge, proceeding step by step or degrees, regularly, progressive, slow, as a gradual increase of knowledge."

This very citation illustrates a progress slow and gradual, about one-half the period, intermitted by sleep and very unequal in degree of progress when wakeful, the mind being more or less receptive at different periods from childhood to old age, so also

man is said to grow slowly and gradually to maturity in twenty-one years, though he has spasmodic periods of rapid as well as of slow growth, and so with the Rio Bravo at Juarez; moving its bed and banks Southward slowly and gradually by gradual erosion of the Mexican bank and deposit on the United States bank; fourteen hundred meters in forty-three years from 1852 to 1895, an annual advance of thirty-two meters.

On pages 11 and 12 of his report,[a] the Mexican Consulting Engineer obtained 1400 meters as the distance of the largest advance made by the river in forty-three years over the land in dispute and adduces therefrom an annual advance of 32.57 meters, but says "it is to be borne in mind that, as the destruction of the banks is next to none during six months in each year, for the reasons herein above set forth, the average of thirty meters obtained as above must be duplicated, i. e., the definitive figure of annual advance is sixty meters."

The United States Commissioner does not understand the justice or mathematical logic of such a proceeding.

On page 15 of the Mexican Commissioner's compendium[b] he quotes a paragraph from the joint report of the Commissioners to their respective governments dated San Antonio, Texas, January 15th, 1895, and printed in the special report of the United States Commissioner on page 9, by which he attempts to make the United States Commissioner say that all changes in the upper section of the river were true avulsions. In this the Mexican Commissioner is seriously mistaken, and the United States Commissioner is surprised that he should have fallen into the mistake, for he too, joined in signing the written report. What the United States Commissioner did say and can be fairly understood from the full context of the report was that the avulsive changes in the upper section of the river were true avulsions (as has since been proven in the decision of the Case of the Island of San Elizario, No. 10) in contradistinction to the banco changes in the lower section of the river. He had no reference to the slow and gradual changes by erosion and deposit, this being written entirely upon the questions of avulsion, submitting to the respective governments of each Commissioner the serious question as to whether or not the banco changes should be further treated by the Commission or eliminated from those characterized in the Treaty as avulsive changes.

---

[a] [See supra, p. 173.—Agent's note.]

[b] [See supra, p. 197.—Agent's note.]

The report began, after the preliminary heading, as follows:

"The Commission found the bancos so utterly different from what they had expected that, after long and deliberate consideration, they concluded that their process of formation, their form, and constantly changing character, could not have been contemplated by the Conventions creating the treaties of 1884 and 1889, and they have both felt impelled to suggest separately to their Governments a reconsideration of Articles I and II of the Treaty of 1884, so far as those articles relate to these bancos, as said articles appear to clearly establish a banco as an avulsive change.

"To illustrate our reasons for coming to this conclusion, we will state that the 1,300 miles of the Rio Grande which constitute the international boundary from El Paso to the Gulf may be divided into three characteristic divisions.

"The first from El Paso to Presidio del Norte, where, by reason of the greater fall in the river's current and the firmer consistency of the earth, the changes in the river's channel are true avulsions and clearly come within the avulsive changes described by Attorney-General Cushing in his opinion of November 11, 1856; that is to say, by 'deserting its original bed the river forms for itself a new channel in another direction, thus forming an island, the length of which, parallel to the river, is many times its width, and often leaving many inhabitants with cultivated fields living on it, and 'the nation from whose territory the river thus breaks its way suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary."

"The third division, from Rio Grande City to the Gulf, but 108 miles in a direct line, but 241 miles by the course of the river, passes through such low alluvial bottoms where the earth has little consistency with such slight fall, that the channel of the river is ever changing from right to left, always eroding the concave bank and depositing on the convex in low, as well as high water, though of course the changes are more marked during the high-water stages. These erosions are greater where the water in its tangent from its curve strikes the bank at the most obtuse angle, ceasing when the angle becomes so acute that the water is more readily deflected by the consistency of the earth, so that when the curve has formed almost a circle, the radius of which is dependent on the consistency of the earth and the volume and velocity of the water, the erosions practically cease and the river turns upon itself in a circle and forms a cut-off, leaving the land so separated in something like the shape of a pear or gourd. This will be illustrated by an examination of the enclosed maps of the four bancos which we have surveyed—practically five bancos, for one of them, Santa Margarita, is a complete double banco.

"These bancos are typical of all the rest, not having been, in any way selected, but taken at random by the accident of the complainants. There are perhaps forty or forty-five other bancos of a similar character in this division, probably nearly equally

distributed on the two banks of the river between Rio Grande City and the Gulf. They perhaps will have but an average of one or two hundred yards frontage on the river, but the length of boundary added by following the deepest channel in the bayou or old bed of the river will probably average four or five miles, thus increasing the boundary line several hundred miles, and instead of simplifying the question of boundary would confound the confusion already existing. These bancos are low, generally newly formed land, seldom occupied by any inhabitant, liable to overflow and do overflow almost every year".

"After a careful consideration of all these questions, and our experience with the four bancos already surveyed, and an examination of many citizens who have still others to survey, we feel that it is our duty before proceeding further, to present these facts for the consideration of our Governments, and suggest that they may wish to amend Articles 1 and 2 of the Treaty of 1884, so that any banco having less frontage on the river's current than it has depth from the river shall not be considered as an avulsive change as contemplated in the treaty, but in these cases the Commission be authorized to announce the transfer of jurisdiction to the country in which it is located, provision being made for the transfer of the evidence of titles to land from the local authority on the side from which it is transferred to the local authority on the side to which it is transferred. The inhabitants of the land, if there be any, to retain their citizenship in the country to which they belong if they so choose.

"As Article 8 of the Treaty of 1889 provides that the judgment of the Joint Commission shall be considered binding upon both Governments, unless one of them shall disapprove it within one month, reckoning from the day on which it shall have been pronounced, and as this subject would probably occupy the two Governments for more than thirty days before coming to a decision, the Commissioners have considered it best not to pronounce their decision at present or until further instructed by their Governments after the Commissioners shall have explained verbally in detail the question submitted."[a]

From what has been quoted from our Joint Report, it ought to be clearly understood that no reference was intentionally made to slow and gradual changes but to the two classes of avulsive changes, those true and those thought by ourselves to be false (the bancos), but if further evidence of that fact is needed I will quote from our decision, fully agreed upon on the Banco de Camargo, but not officially pronounced as explained in the last paragraph of the quotation from the report above referred to:

"The Engineers having completed their maps and reports in the case of Banco de Camargo (No. 2), the Joint Commission

[a] [For complete text of the Joint Journal of Jan. 15, 1895, see infra, page 1092.—Agents Note.]

met at the office of the Commission for deliberation and final decision, and, after mature consideration of their personal investigation, the reports and maps of the engineers, as well as the evidence taken, find the following facts:

"In 1865 the Rio Grande, in front of Rio Grande City, began, by gradual erosion from the Mexican bank and deposit on the American bank, to change to the South in the direction of Camargo, and continued thus to change gradually for 27 years, when, in 1891, it made a sudden avulsion, abandoning the old channel around the accretions by a sudden cut-off at or near the point marked "A" on the accompanying map (Sheet No. 1)."[a]

This decision was printed in full and at the request of the Mexican Commissioner copies were furnished him to forward with his report on the four bancos, and which doubtless are on file in the government archives in Mexico, as they are on file in the government archives of the United States.[b]

By this decision it will be observed that the Mexican Commissioner agreed with the United States Commissioner in the case of the Banco de Camargo that in the 27 years from 1865 to 1891, the river by "gradual erosion from the Mexican bank and deposit on the American bank" changed to the South as represented on sheet No. 1, and by applying the scale to that sheet, it will be observed that the river in the 27 years mentioned moved 2,350 meters, or an annual average of 87 meters. The greatest annual average of movement of the river in the Chamizal Case, was 32 meters, so it will be left to the Mexican Commissioner to explain why he found the movement of the river at the annual rate of 87 meters, in the case of Banco de Camargo, gradual, while he is unable to agree that an annual movement of 32 meters in the Chamizal Case is gradual.

In the Banco de Vela Case a similar finding was agreed upon, that the formation of the banco was made "gradually by erosion of the American bank and deposit on the Mexican bank" and then cut off by avulsion. (See Sheet No. 2 of the printed report above referred to.)

---

[a] [For this map see p. 188, "Proceedings of the International Boundary Commission" submitted herewith.]

[b] [See infra p. 1102 for the full text of the probable decisions in the four typical "banco" cases here referred to. See infra p. 1101 for General Mills' letter of September 25th, 1895, in which he transmitted these probable decisions to the Department of State. See infra p. 912 for the note of the Department of State of Dec. 5, 1895, transmitting the probable decisions to the Mexican Legation at Washington and p. 913 for the note of acknowledgement of the Mexican Legation of the same date. The maps referred to in the probable decisions may be found on pages 188 to 191 of the "Proceedings of the International Boundary Commission."—Agent's note.]

In the Banco de Granjeno another similar finding was arrived at, namely, "this gradual formation continued until about the year 1870, when, by sudden avulsion at or near the point marked 1, on the map before referred to (Sheet No. 3), it abandoned its former channel and by a cut-off made a new one."

In the case of still another banco, the Banco de Santa Margarita, another similar decision was arrived at in the following words: "this gradually reformed by erosions from one bank and deposit on the other until about the year 1880 or 1881, when, by a sudden change or avulsion, the river abandoned its old channel and opened a new one at or near the point marked "E" on the accompanying map (Sheet No. 4)."

A copy of each of these printed memorandum of probable decisions which are quite formal and lengthy are attached hereto for the better understanding of those who have the future consideration of this case.[a]

A reference is also further requested to the printed report of these four banco cases embracing the maps and testimony given and recorded therein to establish these slow and gradual movements by erosion and deposit that were informally admitted and agreed upon by the two Commissioners and only withheld from pronouncement because of the reasons stated in the record as follows: "As Article 8 of the Treaty of 1889 provides that the judgment of the Joint Commission shall be considered binding upon both Governments unless one of them shall disapprove it within one month, reckoning from the day on which it shall have been pronounced, and as this subject would probably occupy the two governments for more than 30 days before coming to a decision, the Commissioners have considered it best not to pronounce their decision at present or until further instructed by their governments after the Commissioners shall have explained verbally in detail the questions submitted."

The testimony in each case shows the highest flood rises at El Paso to be 9 or 10 feet, while at Camargo and Rio Grande City they are 24.

If we had not decided the first change in each of these banco cases to be "Slow and gradual" under Article I of the Treaty of 1884, the boundary line would have remained exactly where it was placed in 1852 and there would have been no occasion to con-

[a] [See infra p. 1102 for the text of these probable decisions. See supra p. 204 note. Agent's note.]

sider the subsequent avulsive changes or "cut-offs" or in any way trouble our respective governments with the very grave question of a change in the treaty to eliminate the second (avulsive) change or cut-off, for if the first changes were avulsive, the second or cut-offs could cut no figure, as the river there would not be the boundary, but the boundary would remain in the old dry bed as established in 1852.

In his compendium, on page 3,[a] the Mexican Commissioner states that the river changed imperceptibly in a period of twelve years from 1852 to 1864. Witness Serna says "In 1864 there was a large flood." Witness Ochoa says "from 1858 to 1860 there were some small changes." Witness Flores says "It changed from 1864 or 1865 to 1882." Witness Schutz in reply to the question "Has the river changed from 1854 to 1864" replied "As I stated before, it changed every year a little, gradually, but not of any consequence that you could see a tremendous change." Witness Magoffin says in answer to the question "From 1856 to 1882 has the river bed been changing year by year?" "Yes, sir, it has been changing to the South whenever there was high water." Witness Ochoa says "Yes, there have been slight changes before 1864 and after 1858." "I mean that each change was slight in itself." Witness Samaniego said in answer to the question "From 1852 to 1859 did the river make any great changes towards Mexico?" "When I returned in 1859 the river was much nearer its present location."

Anson Mills, then Deputy Surveyor, now the United States Commissioner, in his survey embracing part of the lands in dispute, dated February 8, 1859, found an accretion to the United States bank of thirty-eight acres to the survey as made by W. L. Diffendorffer, March 25, 1853, and since the Mexican Consulting Engineer has expressed some doubts as to the correctness of this survey, the United States Commissioner desires to say that the land was measured with due accuracy and the contents computed with the usual precision. The banks were well defined with growing vegetation, and there can be no question but there was an increase of about that number of acres. Therefore taking this survey together with the testimony of the witnesses before referred to, and the supposition that the increase had gone on in the next succeeding six years in the same ratio, there would have been an increase of something more than 80 acres in twelve years, thus

[a] [See supra p. 187.—Agent's Note.]

by the admission of the Mexican Commissioner that the changes during these years were imperceptible, according to his own view of slow and gradual accretion, the boundary would not justly be where Emory and Salazar established it, but sufficiently removed Southward to embrace the 80 acres of increase acknowledged as slow and gradual erosion and deposit.

On page 7 of his compendium[a] he states the fact that the banks are highest next the river is inexplicable with gradual erosion. Vernon-Harcourt, in his "Rivers and Canals", (Vol. I, page 11), says that in permeable strata the valleys on silt-bearing rivers are highest near the banks by reason of deposits produced in flood time, and this is a well-known fact to all hydraulic engineers.

On page 8 of his compendium, the Mexican Commissioner states in quotation, as though quoting from a witness: "not only allays its fury but runs dry and dies out during Winter time and part of Spring, which is nearly half the year." No evidence has been adduced to show that the river ever went dry during the Winter and with my familiar knowledge of it for the past thirty-eight years, I have never known or heard of its doing so. The current is most constant during the Winter and always flows. Prior to 1885 the river was never known to go dry oftener than about once in seven years and then only for a few weeks, generally in August or September.

On page 8,[b] the Mexican Commissioner again states in quotation, as though quoting from a witness "destroys dams, tears off in a few minutes parcels of land of even more than 50 yards." There is no evidence to sustain such a statement, the nearest approach being as follows:

Provencio testified to 50 yards in a day and Samaniego to 50 or 100 yards in a night.

The syllogism of the Mexican Commissioner must be rejected, not only because its minor proposition is not proven, but because it is abundantly disproven by every witness who testified in the case save Serna.

The Mexican Commissioner in his review of the case Nebraska v. Iowa in the Supreme Court of the United States, has quoted copiously from the decision itself and the numerous authorities referred to in so far as he thinks supports his case but he does not give that part of the decision which clearly and forcibly decides

[a] [Footnote, see supra, p. 191.—Agent's Note.]

[b] [See supra, p. 191.—Agent's Note.]

that the change there was not only slow and gradual, but imperceptible, the movement being taken as a whole, embracing both banks, for while, as in the Chamizal Case, the loss on one side was quite perceptible by the rapid and continuous falling of large portions of the banks, the gain on the other was slow and imperceptible, by the deposits under water of alluvium and this too in the face of the fact that the annual movement was nearly three times as great as that at Chamizal, 32 meters.

An application of the scale to the map furnished with that case shows a separation of 1800 meters between the river of 1856 and that of 1877, a period of 21 years, being an average annual movement of 85 meters.

The following is extracted from the decision:

"The case before us is presented on testimony, and not on allegation. But what are the facts apparent from that testimony? The Missouri River is a winding stream, coursing through a valley of varying width, the sub-stratum of whose soil, a deposit of distant centuries, is largely of quicksand. In building the bridge of the Union Pacific Railway Company across the Missouri River, in the vicinity of the tracts in controversy, the builders went down to the solid rock, sixty-five feet below the surface, and there found a pine log a foot and a half in diameter—of course, a deposit made in the long ago. The current is rapid far above the average of ordinary rivers; and by reason of the snows in the mountains there are two well known rises in the volume of its waters known as the April and June rises. The large volume of water pouring down at the time of these rises, with the rapidity of its current, has great and rapid action upon the loose soil of its banks. Whenever it impinges with direct attack upon the bank at a bend of the stream, and that bank is of the loose sand obtaining in the valley of the Missouri, it is not strange that the abrasion and washing away is rapid and great. Frequently, where above the loose substratum of sand there is a deposit of comparatively solid soil, the washing out of the underlying sand causes an instantaneous fall of quite a length and breadth of the super-stratum of soil into the river; so that it may, in one sense of the term, be said, that the diminution of the banks is not gradual and imperceptible, but sudden and visible. Notwithstanding this, two things must be borne in mind, familiar to all dwellers on the banks of the Missouri River, and disclosed by the testimony: that while there may be an instantaneous and obvious dropping into the river of quite a portion of its banks, such portion is not carried down the stream as a solid and compact mass, but disintegrates and separates into particles of earth borne onward by the flowing water, and giving to the stream that color, which, in the history of the country, has made it known as the "muddy" Missouri; and, also, that while the disappearance, by reason of this process, of a mass of bank

may be sudden and obvious, there is no transfer of such a solid body of earth to the opposite shore, or anything like an instantaneous and visible creation of a bank on that shore. The accretion, whatever may be the fact in respect to the diminution, is always gradual and by the imperceptible deposit of floating particles of earth. There is, except in such cases of avulsion as may be noticed hereafter, in all matter of increase of bank, always a mere gradual and imperceptible process. There is no heaping up at an instant, and while the eye rests upon the stream, of acres of rods on the forming side of the river. No engineering skill is sufficient to say where the earth in the bank washed away and disintegrated into the river finds its rest and abiding place. The falling bank has passed into the floating mass of earth and water, and the particles of earth may rest one or fifty miles below, and upon either shore. There is, no matter how rapid the process of subtraction or addition, no detachment of earth from the one side and deposit of the same upon the other. The only thing which distinguishes this river from other streams, in the matter of accretion, is in the rapidity of the change caused by the velocity of the current; and this in itself, in the very nature of things, works no change in the principle underlying the rule of law in respect thereto.

"Our conclusions are, that, notwithstanding the rapidity of the changes in the course of the channel and the washing from the one side and on to the other, the law of accretion controls on the Missouri River as elsewhere, and that not only in respect to the rights of individual landowners, but also in respect to the boundary lines between states. The boundary, therefore, between Iowa and Nebraska is a varying line, so far as effected by these changes of diminution and accretion in the mere washing of the waters of the stream.

"It appears, however, from the testimony, that in 1877 the river above Omaha, which had pursued a course in the nature of an ox-bow, suddenly cut through the neck of the bow and made for itself a new channel. This does not come within the law of accretion, but of that of avulsion. By this selection of a new channel the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel.

"We think we have, by these observations, indicated as clearly as is possible the boundary between the two States, and upon these principles the parties may agree to a designation of such boundary, and such designation will pass into a final decree. If no agreement is possible, then the Court will appoint a commission to survey and report in accordance with the views herein expressed."[a]

[a] [See infra, p. 1154, where this decision of the Supreme Court is printed in full.—Agent's note.]

On page 11, the Mexican Commissioner, in comparing the Missouri River to the Rio Grande, uses these words: "but otherwise the accretion proceeds always—mark always—by imperceptible deposits of particles of earth in suspension, something that does not happen in the Bravo."

"The Missouri River is a stream constantly corroding its bank and "does not remain dry for nearly half the year."

All the witnesses, save Serna, in the Chamizal Case, testified that the deposits in the Rio Grande were imperceptible, while the erosions were perceptible as they were in the Missouri. And not one of them testified that it "remained dry for nearly half the year."

In truth, the Missouri is a more violent and turbulent stream than the Rio Grande, with quite as marked periodical torrential seasons and a regimen otherwise as irregular; in support of which it may be well to extract some expert evidence given in that case.

George Smith, an Engineer, testified as follows:

"The channel of the Missouri River is something over which neither man nor anything else seems to have any control. Every June there is a flood that fills the banks full and sometimes the bayous. The great flood of 1881 was caused by the breaking up of an ice gorge. In my experience and knowledge, as an engineer, there is no other river like the Missouri as to the character of its bottoms and shores. The Platte comes the nearest to it. Am acquainted with the Cedar, Iowa, Mississippi, Missouri, and Platte; the Missouri and Platte beat them all. As a student of the art of Civil Engineering and of the great rivers of the world, I do not think I have ever read of any other stream of like character with the Missouri, or of any one that can claim such dirty tricks."

John S. Smiley, Engineer, testified as follows:

"A very small matter, such as a snag, will throw the current so that it will commence cutting and cut for may be 100 feet. My recollection is that there have been over 2,000 acres of land formed there in 18 years immediately against the Nebraska shore.

"If you would survey a piece of land one year and go back and survey it the next year you would find there was an accretion or cutting off, sometimes it would not amount to 10 feet, but in 19 years it went all of a mile and a half from North to South."

John McPherson, Captain of Ferryboat, testified as follows:

"There was very little cutting going on when I first went to work in 1856. The current was striking the shore—the Iowa shore—in Busha Bend and in Saratoga Bend, the Nebraska shore. The cutting of either of these shores at that time was very slight and not perceptible or noticeable.

"The first heavy cutting was in 1862 and 1863, I think. During some stages of high water and in some seasons, the banks were cut more than in others. As near as I can tell there were days when it seemed to cut the bend perhaps 50 feet back."

FINALLY.

The United States Commissioner insists that the Treaty clearly specifies but two classes of changes in the river, the first clearly defined in Article I as "slow and gradual erosion and deposit of alluvium," and the second, defined in Article II as "by cutting a new bed," or, where there is more than one channel, "by the deepening of another channel than that which marked the boundary at the time the survey was made under the aforesaid treaty." Any other unspecified change, as is implied in the major proposition of the syllogism of the Mexican Commissioner, we have no authority to consider, but that our respective conclusions must be in favor of one or the other, as specifically stated in the Treaty.

All the witnesses, save Serna, testified that the Mexican bank was never overflown by the floods, hence, how is it possible that the river could have cut for itself a new bed or abandoned its old bed to the South.

If the views of the Mexican Commissioner are sustained, then our work on the four bancos must be reversed and the boundary as here, at El Chamizal, placed where the Commission of 1852 placed it; for the changes there have been less "slow and gradual" than here, while the rise and fall of floods have been more than twice as great there than as here, and the torrential season quite as intermittent.

In the opinion of the United States Commissioner, if the change at El Chamizal has not been "slow and gradual" by erosion and deposit within the meaning of Article I of the Treaty of 1884, there will never be such a one found in all the 800 miles, where the Rio Grande, with alluvial banks, constitutes the boundary, and the object of the treaty will be lost to both governments, as it will be meaningless and useless, and the boundary will perforce be through all these 800 miles continuously that laid down in 1852, having literally no points in common with the present river, save in its many hundred intersections with the river, and to restore and establish this boundary will be the incessant work of large parties for years, entailing hundreds of thousands of dollars in expense to each government and uniformly dividing the lands between the nations and individual owners, that are now, under

the supposition that for the past forty years, the changes have been gradual, and the river accepted generally as the boundary, under the same authority and ownership; for it must be remembered that the river in the alluvial lands, which constitute 800 miles, has nowhere to-day, the same location it had in 1852.

To illustrate the correctness of this assertion, please refer to the report and maps of the survey of the four bancos, Camargo, Vela, Granjeno, and Santa Margarita, where, it will be observed, that the old river location, containing the boundary of Emery and Salazar, has no points in common with the present river, save the points of intersection, and this is true during the whole length of the river, save where, for the middle third section, it is bounded by solid banks and not by alluvial deposits.

The change at Old Fort Bliss, only a mile below El Chamizal, where about the same amount of land, 600 acres, was so abundantly proven by the testimony in this case, to have been placed on the Mexican side, by the same floods and under precisely the same methods, agencies, and conditions, would begin the continuance of a new boundary on dry land, coincident with that of 1852, and each succeeding bend in the river, throughout its alluvial banks to the Gulf, would, in justice and consistency, be likewise rectified, leaving only the crossings of the river by the boundary, points common to them both.

For three good and sufficient reasons the onus probandi in this case rests with Mexico.

First. Vattel says, Book 1, ch. 22, sec. 268: "In case of doubt, every territory terminating on a river is presumed to have no other boundary than the river itself; because nothing is more natural than to take a river for a boundary, when a settlement is made; and wherever there is a doubt, that is always to be presumed which is most natural and most probable."

Second. For 42 years, from 1852 to 1894, Mexico rested on her rights, if she had any, by not only failing to set up any claim to the land now in dispute, but by assenting to the jurisdiction of the United States over it.

Third. Mexico being the complainant, it rests with her to prove the change avulsive and wrought by the "cutting of a new channel and abandonment of the old one," and it is not for her to say that the change was not gradual, uniform, and unintermittent; hence, no matter how it otherwise changed, the change must be avulsive and the old boundary maintained without further proof, for one

of the "any other changes" implied in the major premise of the Mexican Commissioner's syllogism and which must be alleged and proven, might be wrought by artificial means, such as jetties, piers, or obstructions, or dredging, etc., which are strictly prohibited in Article III of the Treaty of 1884.

I regret, therefore, for the reasons above set forth, that I am unable to agree with the Mexican Commissioner that the change at El Chamizal (Case No. 4) was wrought by "the cutting of a new bed or the deepening of another channel" on the Mexican side, according to Article II of the Treaty of 1884, but I am firmly of the opinion that the change was wrought by natural causes, through the "slow and gradual erosion and deposit of alluvium," according to Article I of the Treaty of 1884.

The United States Commissioner having concluded his reply to the compendium of the Mexican Commissioner, and the two Commissioners being still unable to reach an agreement, it was decided to conclude the further consideration of the case known as "El Chamizal" No. 4, each Commissioner to report the disagreement to his government, with full copy of all the proceedings in the case.

The Joint Commission then, at 12.30 P. M., adjourned.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[SPANISH TEXT]

PROCEEDING IN CHAMIZAL CASE NO. 4 BEFORE THE INTERNATIONAL BOUNDARY COMMISSION OCTOBER 29, 1905–JULY 17, 1906

[ACTA]

SAN ANTONIO, TEXAS, *Octubre 29 de 1895.*

La Comisión mixta se reunió á las 9 A. M. y no teniendo asunto de que tratar en este lugar, convino trasladarse immediatamente á El Paso, Texas, para ocuparse allí en el examen del caso "El Chamizal, No. 4."

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

EL PASO, TEXAS, *Noviembre 4 de 1895.*

La Comisión Mixta se reunió en la oficina del Comisionado americano á las 10 A. M.

El Comisionado mejicano presentó los expedientes del caso "El Chamizal No. 4," al estudio de la Comisión Mixta.

Presentó también el Comisionado mejicano un nuevo caso á la Comisión Mixta, llamado "La Isla de San Elizario" catalogado con el No. 10.

A las 11 A. M. se disolvió la junta, y quedó citada para el día 6 del actual á las 10 A. M.

F. JAVIER OSORNO, ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

C. Jefe Politico:

Pedro Ygnacio García, mayor de edad, labrador y de este vecindario, comparezco respetuosamente ante Ud. manifestándole: que el año de mil ochocientos diez ocho, fueron adjudicados por el Sr. Teniente de Caballería y Gobernador Politico de Paso del Norte, al Señor Ricardo Brusuelas, más ó menos unas veinte mil varas cuadradas (20,000 Vs. Sq.) de terreno en un punto, que entonces estaba de este lado del Río Bravo. El Sr. Brusuelas unido á Don Felix Miranda, Doña Ursula Miranda y Don José Antonio Apodaca,

vendió á mi abuelo el Señor Don Lorenzo del Barrio el año de 1827 aquel terreno, con el nombre de " El Chamizal " cuando ya estaba construida en él una casa que entró tambien en la venta. Mi Señor abuelo mencionado estuvo en pública y pacífica posesión de esta propiedad raiz sin interrupción, desde que la adquirió hasta su fallecimiento ocurrido en 1865, y al año siguiente en 1866—Octubre 15—su hijo y albacea Don Antonio del Barrio me traspasó la referida propiedad, la cual estuve poseyendo por medio de mi arrendatario Don José Acosta, hasta el año de 1873 en que á consecuencia del cambio brusco y repentino de la corriente del mencionado Río Bravo, quedó de hecho aquel terreno, al otro lado de dicho río, ó sea del lado de lo que hoy se llama "El Paso, Texas." Desde entonces acá no me he atrevido á ocupar mi enunciado terreno, temeroso, entre otras cosas, de que se me siguiera algun perjuicio personal por parte de algunos Norte-Americanos que suponiéndolo parte del territorio de los Estados Unidos de Norte América, pretendían ocuparlo, y ademas porque no sabía á ciencia cierta á qué Gobierno debia yo reconocer como Soberano de él, para el pago de las contribuciones. Los hechos que he relatado constan unos en los documentos que en tres fojas útiles presento, y para comprobar los que se refieren al cambio repentino del curso del río é identificar el terreno en cuestión ruego á Ud. se digne recibir, por medio de la autoridad judicial correspondiente el testimonio de los Señores nombrados en los interrogatorios adjuntos, vecinos de esta Ciudad, examinándolos á su tenor, y hecho esto, se sirva Ud. pasar este ocurso, los documentos que presento y la información testimonial solicitada, á la Comisión Internacional de Límites, de conformidad con el art culo VIII de la Convención entre México y los Estados Unidos, de fecha 1° Marzo de 1889, para que ella se digne resolver según lo estipulado en los cláusulas II y III de la Convención de 1884, á cual de las dos Naciones pertenece el terreno de que se trata, y cuales son las acciones que á virtud de su resolución me competen.

Es justicia que pido con la protesta necesaria.

PEDRO Y. GARCIA.

CIUDAD JUÁREZ, *Enero veintitres de mil ocho cientos noventa y cuatro.*

JEFATURA POLITICA DEL DISTRITO DE BRAVOS, NO. 371.

Habiéndose practicado por el Juzgado de Letras de este Distrito la información testimonial promovida por el C. Pedro Y. García

en su ocurso de 23 de Enero próximo pasado esta Jefatura acordó lo siguiente:

"*Febrero 19 de 1894.*

"Acúsese recibo y como lo pide el interesado en su escrito de 23 de Enero último, pase dicho Ocurso, los documentos que presentó y la información practicada á la Comisión Internacional de Límites para los efectos que correspondan."

Lo que me honro en insertar á esa respetable Comisión para los efectos á que hubiese lugar; adjuntándole en quince fojas útiles el Ocurso, documentos originales, una copia simple de ellos y la información testimonial de que se trata.

LIB. Y CONST., C. JUÁREZ, *Febrero 26 de 1894.*

JESÚS O. NAJERA.

Al SR. JEFE DE LA COMISIÓN MEXICANA,
EN LA COMISIÓN INTERNACIONAL DE LÍMITES.
Presente.

SECRETARIA DE RELACIONES EXTERIORES,
SECCIÓN DE AMÉRICA, ASIA, Y OCEANÍA,
MESA ESPECIAL DE LÍMITES.
MÉXICO, *Octubre 29 de 1894.*

En 4 de Septiembre próximo pasado el Promotor Fiscal del Juzgado de Distrito de Paso del Norte, Chihuahua, promovió dos informaciones con el objeto de averiguar cuales han sido los cambios que haya sufrido la corriente del Río Bravo desde el punto donde alcanza el último poste internacional que marca la línea divisoria entre México y los Estados Unidos hasta dos leguas al Oriente de la misma ciudad, y desde el 2 de Febrero de 1848 hasta el día en que promovió dichas informaciones.

Los expedientes instruidos con tal objeto son tres y adjuntos los acompaño en fojas 22, 12, y 104, de conformidad con lo dispuesto en los artículos 1 y 4 de la Convención de 1 de Marzo de 1889, á fin de que, en unión del Comisionado de los Estados Unidos, proceda usted con arreglo al citado artículo 4, trasladándose al lugar en donde se efectuó el cambio y practicando allí diligencias que correspondan para decidir lo que debe resolverse con arreglo al tratado.

Reitero á usted las protestas de mi consideración.

MARISCAL.

SEÑOR COMISIONADO DE MÉXICO,
EN LA COMISIÓN INTERNACIONAL DE LÍMITES,
CON LOS ESTADOS UNIDOS DE AMÉRICA.
REYNOSA, TAMAULIPAS.
Por separado 1 paquete.

[Acta.]

EL PASO, TEXAS, *Noviembre 6 de 1895.*

La Comisión mixta se reunió en la oficina del Comisionado americano á las 10 A. M., de conformidad con el aplazamiento de 4 del actual.

El Comisionado de los Estados Unidos manifestó, en seguida, que había examinado los expedientes del caso de "El Chamizal" No. 4, tan prolijamente como le había sido posible desde que le fueron presentados, en la última reunión de la Comisión mixta el 4 del corriente, y que encontró que se componen de 139 páginas y contienen; la solicitud del quejoso Pedro I. García, con las deposiciones de varios testigos que declaran por escrito sobre quince puntos, ante funcionarios mejicanos; así como también veinte y tres escrituras de propiedad en los terrenos conocidos por "El Chamizal"; y que no se creía autorizado para admitir el testimonio rendido, como prueba convincente, en el caso, conforme á los términos del tratado.

La única cuestión que tiene que someterse ante la Comisión mixta, según él lo comprende, es la localización de la línea divisoria y la jurisdicción nacional sobre los terrenos adyacentes; y no tiene que ver con los títulos privados de las tierras, y, para simplificar el caso, evitando la muchedumbre de documentos en el expediente y apresurar la terminación, está dispuesto á aceptar en nombre de su gobierno, que en la época de la fijación de la línea divisoria entre los dos gobiernos en 1855, por los Comisionados Emory y Salazar, conforme al tratado de Guadalupe Hidalgo, los terrenos entonces conocidos por "El Chamizal" estaban en su totalidad dentro del territorio y jurisdicción de Méjico; y que, posteriormente, una parte de esos terrenos pasaron por la acción del Río Grande al lado americano de dicho río, y manifiesta que una vez admitido lo anterior, toda la cuestión sometida á la Comisión se reduce á saber si el río cambió su curso por corrosión gradual de la ribera mejicana, y depósitos de aluvión en la ribera de los Estados Unidos, como lo describe el artículo 1° del tratado de 1884, ó si fué por avulsión repentina, abriendo nuevo canal ó haciendo otro más profundo que el que servía para demarcar la línea divisoria.

En el primer caso, el canal actual del río deberá ser la línea divisoria, y, en el último, la línea divisoria se fijará en el antiguo canal aunque esté seco.

El Comisionado americano estima que la expresión de tal consentimiento, abarca, en el fondo, todo lo que se pretende probar

con los diez primeros interrogatorios en favor del reclamante, así como todo cuanto pudiera establecerse con la admisión de las veinte y tres escrituras, como prueba testimonial; añade que cree cumplir con su deber, rechazar aquellas contestaciones favorables al reclamante que van á continuación de los interrogatorios,—números 11 al 15,—y pide además, que conforme á las reglas generales en materia de prueba, los testigos se presenten en persona, siempre que sea posible,—á rendir verbalmente su testimonio ante la Comisión mixta.

En consecuencia, propone que la Comisión mixta ocurra en seguida al lugar donde se dice ocurrió el cambio y haga el examen personal prescrito por el artículo 4 del tratado de 1889, y, si fuera necesario, que se tomen las declaraciones y se hagan los trabajos de ingeniería que se estimen necesarios, conforme al artículo 6 de su reglamento.

El Comisionado mejicano repuso que aceptaba las declaraciones y aceptaciones del Comisionado de los Estados Unidos en todo lo favorable, y pidió que se recomendara á los ingenieros que procedieran, á la posible brevedad, á levantar un bosquejo preliminar que permita á los Comisionados identificar los terrenos disputados.

A los 11.30 A. M., la Comisión se separó en espera que los ingenieros hayan levantado dicho bosquejo.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Diciembre 11 de 1895.*

El Ingeniero Consultor de la Comisión mejicana presentó terminado el bosquejo preliminar para la demarcación de los terrenos en disputa á que se refiere el acta de 6 de Noviembre, ante la Comisión mixta, la cual se reunió en la oficina del Comisionado americano á las 11 A. M. Los Comisionados dieron principio al examen de dicho bosquejo preliminar comparándolo con otro bosquejo semejante que había preparado, entretanto, por su lado el Ingeniero Consultor de la Comisión americana.

Inmediatamente se pudo notar una importante discrepancia entre ambos bosquejos, y, por desgracia, precisamente en el punto importantísimo en que se supone que se verificó la avulsión cuyo examen se halla sometido á la Comisión mixta. El ingeniero consultor de la Comisión mejicana manifestó que había formado su bosquejo valiéndose exclusivamente del ejemplar del mapa original mejicano número 29 de Emory y Salazar, fechado en 1852,

y el ingeniero consultor de los Estados Unidos expuso que su diseño lo habia ajustado exclusivamente á la copia fotográfica del mapa de los Estados Unidos No. 29 levantado por Emory y Salazar.

Al examinar el mapa de los Estados Unidos se encontró la nota siguiente que pudiera explicar la diferencia observada, pues en ella se dice que los trabajos topográficos de que se formó fueron hechos seis meses después de los que sirvieron para el mapa mejicano; "Este mapa ha sido comparado con el correspondiente de la Comisión mejicana y representa la verdadera línea divisoria. Ambos mapas concuerdan, excepto en el lecho del río, circunstancia que se debe á que los dos trabajos topográficos fueron ejecutados en distintas épocas, á seis meses de distancia, tiempo en que el río cambió de lecho, como lo hace constantemente, aunque siempre dentro de estrechos límites."

Prosiguiendo en este examen resultó que la copia fotográfica del mapa número 29 de los Estados Unidos no presentaba huella de haber sido firmada y si acaso lo fué, la fotografía indicaba rastro de haber sido borradas las firmas, en tanto que todas las otras copias fotográficas de los números precedentes tienen las firmas de ambos Comisionados con toda claridad, y que el ejemplar original del mapa mejicano No. 29, en poder del Comisionado mejicano tiene patentes las firmas de la Comisión mixta.

El Comisionado mejicano entonces dijo: que como quiera que el mapa número 29 de los Estados Unidos aparecía no estar firmado, lo consideraba sin valor legal para tratar este asunto, y declinó admitirlo, insistiendo en que la Comisión procediera al estudio del caso de "El Chamizal No. 4" basándose unicamente en el levantamiento de la Comisión mixta que consta en el ejemplar legalmente autorizado, que presentó acto continuo.

En seguida manifestó el Comisionado de los Estados Unidos que le sorprendía el hecho de faltar las firmas, y que como había capital diferencia entre ambos mapas acerca del verdadero punto debatido, no se creía autorizado á continuar usando solamente del mapa mejicano y hacer completamente á un lado el mapa de los Estados Unidos sin instrucciones especiales de su gobierno, en el asunto; las que procuraría obtener en tan breve tiempo como fuera posible, y, propuso que, entretanto, se recomendara á los ingenieros de ambas comisiones que se ocuparan del caso de la isla de "San Elisario No. 10" y comenzaran los laboriosos trabajos topográficos de esa extensa isla por no serle posible saber el tiempo que tardaría en obtener las instrucciones de su gobierno en el

delicado asunto de la falta de firmas, en el importante mapa que él tiene en su poder.

El Comisionado mejicano repuso que prefería que no se comenzaran los trabajos topográficos del caso de la Isla No. 10, hasta que los de éste no se hubieren terminado completamente é insistió en que se resolviera en primer lugar, proponiendo á la vez que la Comisión mixta comenzara desde luego á recibir los testimonios conducentes *con el sigilo necesario.*

El Comisionado de los Estados Unidos replicó entonces, que dudaba que su gobierno aprobara tal procedimiento de juicio secreto; que creía que era costumbre de su gobierno en todos los casos en que se trata de adjudicación de derechos, *que las partes interesadas se presentaran por sí, ó por sus representantes*, y que á su pesar se veía obligado á disentir de la proposición.

Pareciendo entonces á los dos Comisionados que existían varios puntos embarazosos que impedían resolver desde luego este caso, tanto por la dificultad de decidir acerca del cambio del río que se alega ser debido á la avulsión; cuanto por la divergencia de opiniones entre ambos Comisionados sobre la manera de recibir el testimonio, en el caso; y, muy particularmente, por el descubrimiento de la inexplicable falta de firmas de los Comisionados que demarcaron la línea divisoria original, en el mapa de los Estados Unidos; el Comisionado de los Estados Unidos manifestó, entonces, que era su propósito, si no se oponía el Comisionado mejicano, marchar á Washington y someter el caso á su gobierno, procurando adquirir con la brevedad posible las instrucciones necesarias, é indicó que, como el tratado fué hecho entre el actual Ministro mejicano en Washington y el Secretario de Estado de los Estados Unidos, solicitaba que lo acompañase el Comisionado mejicano á Washington con el objeto de consultar allí al Ministro de Méjico, quien probbalemente podría resolver estos puntos de controversia con mayor prontitud, consultando sin dilación con el Secretario de Estado de los Estados Unidos.

El Comisionado mejicano repuso que es en efecto de suma trascendencia dilucidar las discordancias que existen no solamente en los mapas, por la falta de firma, sino por la discrepancia de fechas, y que, tal vez, en Washington sería más fácil aclarar debidamente este punto; pero que por su parte no creía poder separarse de esta ciudad, por el momento, sin previa consulta de su gobierno, lo que hará á la mayor brevedad posible.

El Comisionado de los Estados Unidos dijo entonces, que si el Comisionado mejicano consentía en que los ingenieros de ambas

comisiones se ocuparan de completar los trabajos topográficos conforme á los dos mapas, el mejicano y el americano, dando al uno y al otro la misma significación en cuanto al levantamiento de sus mapas, y dejando la cuestión de legalidad del mapa de los Estados Unidos, á la decisión de ambos gobiernos cuando se termine el caso, estaba conforme con lo propuesto.

A esta proposición asintió el Comisionado mejicano, y así se recomendó á los ingenieros.

La Comisión mixta quedó aplazada hasta el regreso de Washington del Comisionado de los Estados Unidos.

ANSON MILLS. F. JAVIER OSORNO.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Acta.]

EL PASO, TEXAS, *Marzo 21 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados Unidos á las 4 de la tarde.

El Comisionado de los Estados Unidos manifestó que habia recibido instrucciones de su gobierno relativas al pliego no. 29 de los Estados Unidos, ó sea el mapa de la Comisión de Emory y Salazar; así como tambien acerca del asunto sobre si las sesiones serian públicas ó privadas, instrucciones que expondría en la próxima junta.

La Comisión mixta se separó hasta el lunes 23 á las once a. m.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Marzo 23 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados Unidos, á las once de la mañana, de conformidad con el aplazamiento del 21.

El Comisionado de los Estados Unidos, presentó en seguida á la Comisión mixta una comunicación del Secretario de Estado, fechada en 27 de Febrero de 1896, en la que le recomendaba que renunciara al plano de los Estados Unidos No. 29, del mapa de Emory y Salazar, rechazado por el Comisionado mexicano en el acta de 11 de Diciembre de 1895, y que se atuviera por completo al ejemplar mexicano de dicho mapa, (hoja No. 29), para la resolución de todos los casos que en lo sucesivo estuvieran comprendidos en el levantamiento de ese mapa, una vez que éste se hubiese presentado con la autenticidad debida.

Acto continuo el Comisionado de los Estados Unidos propuso, para mayor claridad en la historia del asunto, que se incorporaran en el acta de este día las instrucciones por él recibidas del Secretario de Estado; á lo cual asintió el Comisionado mexicano.

DEPARTMENTO DE ESTADO,
WÁSHINGTON, *Febrero 27 de 1896.*

Al CORONEL ANSON MILLS, *etc., etc.,*
Wáshington, D. C.:

SEÑOR: Acuso á usted recibo de su carta de 8 de Febrero, en la que informa acerca de cuán infructuosas han sido las investigaciones de usted para descubrir la causa de la raspadura de las firmas en el ejemplar, perteneciente á este gobierno, de la hoja No. 29, del mapa de Emory de 1853, en vista de que el original de la propia hoja perteneciente al Gobierno mexicano está firmado y presenta discrepancias en la demarcación del canal del río, que importan un máximum de ciento cincuenta yardas en el lugar en que radica el punto, cuestionado y sometido á su Comisión.

La conjetura que hace usted acerca de que la raspadura haya sido hecha con objeto de sustituir la hoja grabada en que figuraban los facsímiles de las firmas respadas (asi como también dos vistas grabadas, que no existen en el ejemplar original) es plausible, y la discrepancia entre dicha hoja original y la conservada en México queda explicada por la nota manuscrita la cual no fué borrada, y sí repetida en el ejemplar grabado, é indica que son ligeras las discrepancias que se hallan en el lapso de varios meses trascurridos entre los levantamientos topográficos mexicanos y los americanos.

Aun cuando fuera posible demostrar por completo la autenticidad del ejemplar manuscrito y mutilado, que actualmente poseemos, ó la de su facsímile, como un comprobante de la verdadera línea divisoria trazada conforme á lo tratado, el hecho de diferir materialmente con el original en una parte importante de dicha línea divisoria, que el Gobierno mexicano tiene derecho de considerar como parte del tratado de esa frontera, sería difícil de subsanar y tal vez, daría motivo á enojosas negociaciones, hasta obtener un arreglo definitivo para saber en cuál de los dos mapas discrepantes está realmente la verdadera línea divisoria.

Así las cosas, inclínome á creer que la pretensión de que el mapa mexicano sea considerado como único y auténtico no puede atacarse por hecho ó comprobante alguno en favor de este gobierno.

Como el punto pendiente ante la Comisión de que usted forma parte no es tanto la localización de la línea divisoria original existente en 1856, cuando por virtud de un tratado se hizo tal levantamiento, sino, más bien, el de determinar si el cambio del curso del río desde aquel tiempo (cambio en virtud del cual la línea divisoria marcada en cualquiera de los mapas de que se trata, ha quedado á cierta distancia hacia el Norte del canal actual) es debido á la corrosión y acrecimiento ó al corte repentino de un nuevo canal por la fuerza de avulsión; el asunto de la autenticidad

de los mapas es de importancia secundaria en vista de la certidumbre plausible que hasta ahora se tiene de que el canal que hoy existe marca la línea divisoria conforme á los tratados que rigen esa Comisión, por haberse formado dicho canal mediante el desgastamiento de la ribera mexicana y acreción de la americana en ese lugar.

El punto relativo á excluir los bancos, de las decisiones de la Comisión, se está tratando y mientras ambos gobiernos no adopten otro criterio distinto del prescrito por la Convención para esos bancos aislados, el asunto continuará comprendido dentro de las atribuciones de la presente Comisión la cual decidirá en cada caso según se le presente.

Soy de usted, Señor, obediente servidor,

RICARDO OLNEY.

Después de una discusión privada entre ambos Comisionados, relativa al punto ya debatido sobre si las sesiones deberían ser públicas ó privadas, el Comisionado mexicano manifestó *que no pretendía impedir que declarasen por sí ó por apoderado, las personas directamente interesadas* en los casos sometidos á la Comisión; pero que, sí deseaba excluir á espectadores y á cualesquiera personas que no tuvieren interés directo en los negocios de la Comisión.

El Comisionado de los Estados Unidos dijo que esa proposición era aceptable para él y que estaba conforme en proceder de esa manera en lo futuro.

El Comisionado de los Estados Unidos manifestó igualmente que estaba dispuesto á comenzar á tratar el caso de "El Chamizal" si así conviniere al Comisionado de México, y, en vista de esto la Comisión mixta requirió en seguida á los ingenieros que presentaran el bosquejo del caso de "El Chamizal" que se les pidió por acta de 6 de Noviembre de 1895.

La Comisión mixta se aplazó, hasta el miércoles 25 de Marzo á las 11 A. M.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Marzo 25 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados Unidos, á las 11 de la mañana, conforme al emplazamiento del día 23 del actual.

Después de firmar las actas del 21, el Comisionado de los Estados Unidos manifestó, que deseaba someter á la Comisión mixta, el informe de su ingeniero, y un diseño no oficial, relativo al caso de

"El Chamizal" No. 4, pedido por la Comisión mixta en acta de 6 de Noviembre último. Informe en el que manifiesta, que no le había sido posible obtener la conformidad del ingeniero consultor de la Comisión mexicana, según podía verse por la carta explicativa, que á su informe acompañaba.

El plano y carta fueron presentados á la Comisión mixta, con la declaración del Comisionado de los Estados Unidos, de que se hallaba dispuesto á proceder al estudio del caso, en cualquier tiempo que le pareciese al Comisionado mexicano.

El Comisionado de los Estados Unidos agregó además, que deseaba presentar al estudio de la Comisión mixta, el informe de su ingeniero, con el bosquejo del plano de la isla de "San Elizario," Caso No. 10, levantado por el mismo ingeniero, y con la nota de que no le había sido posible obtener la firma del ingeniero consultor mexicano para dicho plano. Manifestó el Comisionado de los Estados Unidos, que estaba dispuesto á tratar de este caso, cuando así conviniera al Comisionado de México.

El Comisionado de México, manifestó en seguida, que según entiende, el plano en el caso de "El Chamizal," No. 4. está listo para el examen de la Comisión mixta, pero que su ingeniero consultor, manifestó que no podia firmar el del ingeniero de los Estados Unidos á causa de las pequeñas discrepancias que existen entre las amplificaciones del mapa de Salazar de 1853, hechas por el Señor P. D. Cunningham, ayudante del ingeniero de los Estados Unidos, y las hechas por el ingeniero mexicano, el cual agregó, que dichas discrepancias, probablemente desaparecerían á la llegada del mapa oficial que estaba entonces en México.

La Comisión mixta aplazó sus sesiones, en espera de que se recibiera de la Ciudad de México, el mapa oficial No. 29.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Informe del Ingeniero de los Estados Unidos.]

EL PASO, TEXAS, *Marzo 25 de 1896.*

AL CORONEL ANSON MILLS,
Comisionado,
El Paso, Texas.

ESTIMADO SEÑOR: Cumpliendo con la recomendación de usted, del 6 de Noviembre de 1895, contenida en acta de ese día, cábeme la honra de presentar adjunto, un bosquejo del caso de "El Chamizal," No. 4, que muestra las ciudades de El Paso, Texas, y Juarez, México, el río entre ambas ciudades tal cual estaba durante

nuestro levantamiento hecho en Diciembre de 1895, y el que se vé en el mapa de Emory y Salazar, de la Comisión de Límites de 1853.

El Coronel Corella, ingeniero consultor de México, no ha querido firmar este mapa, por las razones que expresa su carta, que me dirigió el 24 de este mes, y que remito adjunta.

De usted respetuosamente,

FRANK B. DABNEY,
Ingeniero Consultor.

CIUDAD JUAREZ, *Marzo 24 de 1896.*

MR. DABNEY:

El mapa oficial de Salazar etc., se pidió á México el día 22 del presente mes. Tan luego que lo tengamos aquí, procederemos asociados Usted y yo á hacer una amplificación delicada á $\frac{1}{5000}$.

Con la amplificación así obtenida, haremos la comparación con la topografía actual, y de esta manera localizaremos definitivamente el Río de 1853.

Localizado el Río de aquella fecha, único motivo de discrepancias, en las hojas preliminares que preparamos en Enero, no quedará en pié ninguna discordancia.

En esas circunstancias colocados llegaremos á la firma del mapa que será el Mapa Internacional del Caso "El Chamizal."

Quedo de Ud., afm. y ato. S. S.

EMILIANO CORELLA.

[Acta.]

EL PASO, TEXAS, *Abril 7 de 1896.*

Presentado por los ingenieros el bosquejo preliminar del caso de "El Chamizal" No. 4, que se les pidió en acta de 6 de Noviembre de 1895, la Comisión mixta se reunió en la oficina del Comisionado de los Estados Unidos, y el Comisionado mejicano manifestó que estaba dispuesto á continuar tratando de este caso.

El Comisionado de los Estados Unidos, replicó que también lo estaba por su parte, y propuso que la Comisión adoptara como precedente para la decisión de este caso y otros futuros que puedan serle sometidos en lo que se refiere á avulsión ó corrosión, el fallo de la Suprema Corte de los Estados Unidos en el caso del Estado de Nebraska contra el Estado de Iowa (No. 4 original; fallado el 29 de Febrero de 1892).

A lo que replicó el Comisionado mexicano que había leido el fallo de que se trata y lo consideraba como clara interpretación del Derecho Internacional, pero que no se encontraba competentemente autorizado para aceptarlo como jurisprudencia establecida pero que de allí pueden tomarse los principios generales de Derecho Internacional adoptado por ambas naciones.

El Comisionado mejicano propuso que la Comisión mixta se aplazara, hasta el Juevas 9 del corriente á las once de la mañana, que sería cuando podría presentar algunos testigos para ser examinados en este caso.

La Comisión mixta quedó aplazada hasta esa fecha.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Abril 13 de 1896.*

La junta señalada para el día 9 en acta de fecha 7, fué diferida á petición del Comisionado Mexicano y por motivo del huracán que soplabla en esos días hasta hoy á las 3 de la tarde, en que pudo proceder la Comisión mixta á hacer un examen personal del terreno en disputa en el caso de "El Chamizal" No. 4.

Habiéndose terminado dicho examen personal la Comisión mixta quedó aplazada para reunirse mañana á las 4 p. m., en la oficina del Comisionado mexicano para tomar sus declaraciones á los testigos.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Abril 14 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mexicano, conforme al aplazamiento de 13 del actual.

En seguida presentó el Comisionado mexicano tres testigos para ser examinados acerca de el caso de "El Chamizal" No. 4, á saber; Jesús Serna, Inocente Ochoa y Espiridión Provencio.

El primer testigo Jesús Serna, como ciudadano mexicano, prestó debidamente la protesta ante el Comisionado de México, el cual lo examinó al tenor del interrogatorio siguiente:

P. Diga usted su nombre, edad, residencia, y ocupación.—R. Jesús Serna; 77 años; nacido aquí; empleado del Juzgado Menor de esta ciudad. Siempre he vivido en esta ciudad.

P. ¿Ha vivido usted siempre aquí desde 1852?—R. Sí, Señor, siempre.

P. ¿Del 1852 á la fecha ha notado usted algun cambio en el río?—R. Sí, Señor.

P. ¿Cuando fué el primer cambio notable en el río desde 1852?—R. En 1854 hubo una gran inundación, pero sólo en 1864 hubo un cambio notable.

P. ¿Cambió el río en 1864, ó posteriormente?—R. El río cambió del '64 al '68 pero desde entonces ha permanecido tal cual está.

P. ¿De 1868 á la fecha, ha cambiado notablemente el río?—R. *No, Señor.*

P. Explique usted como sabe lo que ha manifestado.—R. Por que he visto personalmente efectuarse los cambios y era yo batelero del río.

P. ¿Cuando el cambio se efectuó fué lento ó violentamente?—R. El cambio fué violento, destruyendo árboles, cosechas, y casas.

El Comisionado mexicano manifestó que por de pronto no creía necesario hacer otras preguntas al testigo y el Comisionado de los Estados Unidos también manifestó que no deseaba repreguntar al testigo por ahora.

Leida que le fué su declaración al testigo la ratificó.

El segundo testigo Inocente Ochoa, ciudadano mexicano, prestó la debida protesta ante el Comisionado de México y fué examinado en la forma siguiente:

P. Diga usted su nombre, edad, residencia, y ocupación.—R. Inocente Ochoa; 61 años; vivo aquí desde 1857; propietario.

P. ¿ Ha residido usted aquí constantemente desde 1852?—R. Desde 1857.

P. ¿ De 1852 á 1856 ha notado usted algun cambio en el río?—R. Del '52 al '56 no tengo recuerdo de los cambios del río porque viajaba constantemente, pero de 1857 á 1868, sé de varios cambios en el río.

P. ¿ Cuando fué el primer cambio notable del río desde 1852?—R. De 1858 á 1860 hubo algunos cambios pequeños, el mas importante tuvo lugar en 1864 cuando destruyó la presa; pero de 1864 á 1868 hubo ligeros cambios.

P. ¿ El cambio tuvo lugar en 1864 ó posteriormente?—R. El cambio principal fué en 1864 pero desde entonces los cambios han sido pequeños.

P. ¿ De 1868 á la fecha ha tenido el río algun cambio notable?—R. Ha tenido algunos cambios pequeños.

P. Explique usted como sabe lo que ha manifestado.—R. En primer lugar porque en 1858 á 1862, fuí Jefe Político de esta ciudad y durante ese tiempo tuve deberes oficiales que cumplir respecto de la presa y del río; y, en segundo lugar, porque siempre he vivido aquí, y, siendo propietario he estado constantemente á la mira del río, pues he perdido personalmente algunas propiedades.

P. ¿ Cuando el cambio ocurrió fué lento ó violentamente?—R. Como antes dije, á veces era lento y á veces violento y con tal ruido que el estruendo de las riberas al caer semejaban al estampido de un cañon y era muy pavoroso.

El Comisionado mexicano manifestó que por de pronto no tenía más preguntas que hacer al testigo. El Comisionado de los Estados Unidos hizo las siguientes:

P. ¿ Cuán ancho era el lecho del río, cuando estaba lleno de agua, durante los años en que se efectuaron los cambios?—R.

Cuando el río venía muy crecido creo que tendría á veces unas quinientas yardas más ó menos.

P. ¿Cuando estaba muy bajo, cuanto tendría de ancho?—R. Solamente unas cinco yardas.

P. ¿ En la época en que ocurrían los cambios de que usted habló, iba la corriente cerca de la orilla mexicana ó cerca de la de los Estados Unidos, á inmediaciones de lo que era entonces el paso del río y donde hoy está el puente de tranvías en la calle de Santa Fé?—R. Desde un punto cerca del puente del ferrocarril Central Mexicano hasta unas seiscientas yardas arriba aproximadamente, la corriente iba pegada á la orilla mexicana por regla general. Desde ese lugar hacia abajo el canal cambiaba de un lado á otro como llevo dicho pero siempre dentro del lecho del río.

P. ¿ Ha dicho usted que durante los cambios violentos, frecuentemente caían al río grandes trechos de la ribera, produciendo ruidos semejantes á cañonazos. Que pasaba al otro lado?—R. Las arenas que llevaba el río se depositaban al lado opuesto y formaban playas.

Leidas que fueron estas preguntas y respuestas al testigo las ratificó.

El tercer testigo E. Provencio, prestó la protesta de ley ante el Comisionado mexicano, el cual le hizo las siguientes preguntas:

P. Diga usted su nombre, edad, residencia y ocupación.—R. Espiridión Provencio; 48 años. Vivo aquí; propietario.

P. ¿ Ha residido usted aquí desde 1852?—R. Sí, Señor.

P. ¿ Del 1852 hasta hoy ha notado usted algun cambio en el río?—R. No tengo recuerdos mas que de 1860 á la fecha.

P. ¿ Cuando se verificó el primer cambio notable del río á contar desde 1852 á la fecha?—R. Por el año de 1864.

P. ¿ Todo ese cambio del río se efectuó en 1864 ó posteriormente?—R. Comenzó en 1864.

P. ¿ De 1868 á la fecha ha cambiado notablemente el río?—R. Muy ligeros cambios han tenido lugar desde entonces.

P. ¿ Explique usted como sabe lo que manifesta?—R. Porque los cambios violentos del río en 1864 causaron considerable alarma en esta ciudad de tal modo que las gentes acudieron á las riberas y derribando árboles trataban de contener el avance de las aguas. Yo estuve allí algunas veces á ayudar y otras á observar sencillamente. Ayudé á sacar muebles de las casas en peligro y quitar vigas de las casas.

P. ¿ Cuando tuvo lugar el cambio fué lenta ó violentamente?—R. No puedo valorizar las expresiones de lento ó violento, pero á veces, hasta cincuenta yardas se arrancaban, en ciertos puntos durante un día.

El Comisionado mexicano manifestó que no tenía por de pronto mas que preguntar al testigo, y el Comisionado de los Estados Unidos manifestó que por su parte tampoco deseaba repreguntar, por ahora al testigo.

Se leyeron en seguida al testigo sus preguntas y respuestas, en las que estuvo conforme.

El Comisionado Mexicano pidió que la Comisión mixta requiriese á los ingenieros consultores á fin que rindiesen un informe técnico pormenorizado acerca y un mapa en caso necesario de los fundamentos que hay para poder decidir de un modo científico, si el cambio del río, del lugar en que estaba en el año de 1852, cuando el levantamiento de Emory y Salazar, al que actualmente hoy ocupa, es debido á una avulsión ó á una corrosión lenta y gradual, procurando ilustrar su informe con cuantos datos y señales puedan recogerse del terreno en disputa, tales como árboles, restos de antiguos bordes del río y todos los demás que estimen conducentes.

La Comisión mixta en seguida recomendó á los ingenieros que procedieren como queda dicho y aplazó su nueva junta hasta mañana 15 del corriente á las 10 a. m. en la oficina del Comisionado de los Estados Unidos.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Abril 16 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados Unidos á las 10 A. M., por haber suplicado el Comisionado de los Estados Unidos que la junta convenida para ayer quedase aplazada para hoy, á fin de darle tiempo de presentar sus testigos.

El Comisionado de los Estados Unidos manifestó en seguida que había sido informado por el Secretario de Estado, á fin de que la Comisión hiciese las investigaciones necesarias acerca de la presa internacional de El Paso; pero que todo trabajo sobre este asunto debería quedar subordinado al pronto despacho de los negocios de que ya conoce conforme á los tratados internacionales.

En seguida el Comisionado de los Estados Unidos presentó tres testigos; á saber: los Señores José M. Flores, ciudadano mexicano, Samuel Schutz y José Magoffin, ciudadanos americanos.

La Comisión mixta expuso entonces á los testigos un plano preliminar No. 1, hecho por sus ingenieros sobre papel de calca, en que las líneas coloradas representan el río según lo estableció el reconocimiento de Salazar en 1853 y, las líneas negras, que muestran la presente situación del río: en el que se ven además la Estación del Ferrocarril de Santa Fé, la Fundición y otros objetos familiares á los vecinos.

Debajo de dicho plano se encuentra otro marcado con el No. 2, que representa la Ciudad de El Paso y en que están distintamente señaladas sus calles y otros objetos, así como una parte de Ciudad Juárez, México. Colocando el trazo superior sobre el inferior, se puede ver claramente la situación relativa de los puntos; siendo el terreno disputado el que media entre los dos trozos. Se suplicó á los testigos que, al rendir su testimonio, se refirieran en cuanto fuere posible á los objetos señalados.

Al primer testigo, José M. Flores, le fué tomada por el Comisionado de México la protesta de decir verdad y las siguientes preguntas le fueron hechas por el Comisionado americano á saber:

P. Diga usted su nombre, edad, y cual es su domicilio y ocupación.—R. Me llamo José M. Flores; tengo 63 años de edad; resido en Ciudad Juárez, México, y soy comerciante.

P. Sírvase usted decir cuándo vino por la primera vez á esta localidad; si ha residido aquí sin interrupción desde que vino; y, en caso de haberse ausentado de aquí, diga por cuantos años.—R. Vine á este lugar en 1852 y en él permanecí hasta el año de 1854 en que fuí á San Antonio. Regresé en 1857 y he permanecido aquí desde esa fecha.

P. ¿ Sírvase manifestar que oportunidades ha tenido para conocer el Río Grande, sus caracteres y peculiaridades?—R. He cruzado á menudo el río y he vivido cerca de él en ambos lados. En este lado viví el año de 1861 y tenía aquí mi tienda; después la mudé más abajo, siempre en este lado, y por lo menos pasaba de un lado á otro del río, cada 15 dias.

P. ¿ Como pasaba usted el río durante los primeros 25 años que residió usted aquí? ¿ De qué medio se valía usted para pasarlo?—R. Lo pasaba á caballo ó en carruaje; y, en tiempos de las crecientes, lo pasábamos en canoas.

P. ¿ Sírvase usted señalar en el mapa el lugar donde poco más ó menos se hallaba el paso del río cuando lo atravesaba en canoas?—R. El paso variaba según era el cambio del canal del río. En 1861 ó en 1862, me acuerdo que las canoas estaban justamente donde están los árboles en frente de la estacion del Santa Fé.

P. ¿ En qué lado del río estaban esos árboles?—R. En el lado americano.

P. ¿ Dónde estaba el vado por donde pasaba usted en carro etc?—R. El vado se mudaba según los cambios del río. El vado de "Ponce" estaba donde se halla el puente de abajo. Había entonces dos vados, como los hay ahora; uno, donde está el puente de arriba y otro donde está el de abajo.

P. ¿ Dice usted que el río cambiaba. Explique usted cómo ocurrían los diversos cambios de que usted habla?—R. Según yo entiendo esos cambios eran por corrosión. Durante las crecientes el cambio era por corrosión.

P ¿ Eran graduales esos cambios; es decir, tenían lugar anualmente más ó menos?—R. Había años en que esos cambios no tenían efecto. No venía agua suficiente para causar un cambio; pero en algunos años el cambio del río era considerable, según la cantidad de agua que traía.

P. ¿ Supo usted que alguna vez el río abandonara su cauce y formara otro nuevo á través de los terrenos de México en este punto?—R. No, Señor.

P. ¿ Entonces esos cambios se efectuaban debido á cortes hechos en el borde mexicano y depósitos de aluvión en el borde de los Estados Unidos?—R. Sí, Señor.

P. ¿ Cual borde del río era el más alto?—R. Siempre el mexicano.

P. ¿ Sabe usted si alguna vez el borde mexicano se inundó, debido á las crecientes del río?—R. No, Señor.

P. ¿ Supo usted que el borde americano se inundara en tiempo de las crecientes?—R. Sí, Señor.

P. ¿ Cuando las aguas de estas crecientes bajaban quedaban señales en el borde americano de depósitos de arena y aluvión?—R. Sí, Señor. A medida que—cambiaba el río hácia México iba dejando terreno en los Estados Unidos.

P. En los cambios del río que se hacían de la manera que ha descripto usted, ¿ reconoció usted algun terreno qu hubiese visto antes de la creciente en el lado mexicano aparecer en el lado americano con algo que pudiera servir para distinguirlo, como casas árboles etc?—R. Nunca quedó cosa alguna que pudiera yo reconocer como perteneciente al terreno destruído.

P. Mientras esos arenales se formaban debajo del agua, en el lado americano, ¿ pudo usted ver dicha operación con la simple vista? ¿ Pudo usted verlos al estarse formando?—R. No, Señor. No se pueden ver al formarse.

P. ¿ Eran solamente visibles después de que el agua había desaparecido?—R. Sí, Señor.

P. ¿ Cuál sería poco más ó menos la anchura del río de un borde á otro, en el vado, durante esos numerosos cambios en todo ese período?—R. El río dejaba ningún barranco en el lado americano y se desparramaba ó extendía, subían las aguas.

P. Cuando la violencia de la corriente destruía los terrenos en el lado mexicano y precipitaba ó arrojaba la tierra dentro del río ¿ qué pasaba con tal tierra?—R. Se iba con el agua; no sé adonde.

P. ¿ Supo usted, alguna vez de algún cambio súbito, en la parte principal del río, por el lado mexicano, hácia el Sur?—R. No, Señor.

El Comisionado de los Estados Unidos manifestó, en seguida, que no tenía más preguntas que hacer al testigo, por entonces.

Acto continuo, el Comisionado mexicano hizo las siguientes preguntas:

P. ¿ Ha cambiado el río desde 1852 á 1864?—R. Si se cambió no fué mucho; imperceptiblemente.

P. ¿ Se acuerda usted de que hubo una gran creciente, la más grande que se conoció en 1862?—R. Sí, Señor.

P. ¿ Así, pues, usted asegura que, sin embargo de dicha corriente, el río no cambió en 1862?—R. A pesar de la gran creciente no cambió.

P. ¿ Vino la corriente con tanta violencia, entre 1864 y 1868, que destruyó casas y labores?—R. Sí, Señor.

P. ¿ Tenía el río ya en 1868 su actual curso, ahí en donde está marcado en el mapa, con líneas negras, y donde poco más ó menos están ahora los puentes?—R. Yo no puedo contestar esa pregunta.

P. Desde 1864 hasta la presente época, ¿ en qué ocasiones cambió el río?—R. Cambió desde 1864 ó 1865 al 1882.

El Comisionado de los Estados Unidos hizo, en seguida, al testigo las siguientes preguntas:

P. Suplico á usted describa la manera como se efectuaba el arrancamiento del borde mexicano por la corriente de las aguas, en la época en que se verificaban tales cambios.—R. La corriente arrastraba consigo la arena de la orilla, la destruía por debajo y entonces caían los paredones al agua. Si el borde era muy alto se llevaba pedazos grandes como de dos yardas de ancho; pero nunca de mas de tres yardas; pero si los bordes eran bajos se llevaba pedazos más chicos.

El Comisionado mexicano hizo la siguiente pregunta:

P. ¿ Por qué razón cree usted que desde 1852 á 1864 el río no cambió perceptiblemente?—R. Debido á las defensas hechas del lado mexicano las cuales fueron destruídas cuando el río se llevó la presa; el cambio del río fué mayor después de 1864.

Leída al testigo su declaración, la ratificó.

El segundo testigo presentado por parte de los Estados Unidos lo fué el Señor Samuel Schutz, ciudadano americano, el cual fué debidamente juramentado por el Comisionado americano é interrogado por él mismo en la forma siguiente:

P. Diga su nombre, edad, residencia y ocupación.—R. Samuel Schutz; 67 años de edad; El Paso, Texas; comerciante.

P. Sírvase usted decir cuándo vino per primera vez á esta ciudad, si desde entonces ha residido usted en ella continuamente y, en el último caso, diga los años en que estuvo ausente.—R. Vine aquí en el año de 1859; salí el 1865 para Europa donde estuve un año. Despues residí aquí hasta 1873, año en que me fuí otra vez para regresar en 1883. Desde ese tiempo he permanecido aquí.

P. Sírvase usted decir qué oportunidades ha tenido para conocer el Río Grande y estar al tanto de los pormenores que lo caracterizan.—R. La de cruzarlo al mes varias veces; es decir, dos ó tres veces, y haber observado frecuentemente sus cambios.

P. Se da por cierto que el río ha cambiado de lugar, en la forma indicada por las líneas rojas que se ven en el mapa, para ocupar

el lugar marcado por las líneas negras, desde el año de 1853 hasta la presente época. Sirvase decir ¿ qué sabe usted de esos cambios y como sucedieron?—R. Desde el tiempo en que vine aquí, el río ha tenido cambios, aunque muy pequeños en un principio. Casi cada año desde 1859 al '60, '61, '62, y '63. Se cambió frente á esta ciudad un poco, sobre todo más abajo de este lugar, por el año de 1864. Entonces hubo una gran creciente que hizo mayores daños del lado mexicano y minó los bordes más de lo que había hecho en años anteriores, desde mi venida aquí á El Paso.

P. Durante los años que ha vivido aquí ¿ ha sabido que el río, en sus movimientos hácia el Sur, haya abandonado el canal que entonces ocupaba, y haya abierto otro nuevo en los terrenos mexicanos?—R. No, Señor.

P. ¿ De qué modo cruzaba usted el río, yendo y viniendo á México?—R. A caballo, en carruaje y en botes ó canoas.

P. Cuando pasaba usted en canoa, ¿ tenía usted que andar á pié para llegar hasta el río?—R. Generalmente; pero á veces ibamos á caballo ó en carruaje y los dejábamos en este lado del río, hasta que volvíamos.

P. ¿ En alguna de estas ocasiones, vió usted alguna vez un lecho abandonado del río en el lado americano?—R. No, Señor.

P. ¿ Cuál borde era el mas alto?—R. El otro lado; el mexicano.

P. ¿ Se inundó éste alguna vez?—R. No que yo sepa.

P. ¿ Y los bordes de los Estados Unidos, se inundaron?—R. Continuamente durante las crecientes.

P. ¿ Después de que el borde del lado de los Estados Unidos se hubo inundado y las aguas hubieron bajado, notó usted aumentos ó adiciones en el lado americano producidos por bancos de arena ó por depósitos de aluvión?—R. Sí, Señor, los noté.

P. ¿ Estas playas de arena se formaban debajo del agua?—R. Sí, Señor.

P. Mientras que se estaban formando ¿ eran visibles?—R. No, Señor.

P. ¿ Eran visibles después de que el agua había bajado?—R. Sí, Señor.

P. En todos los cambios que el río ha hecho en sus movimientos hácia el Sur ¿ no ha observado usted objetos tales como casas, árboles ó terreno que haya quedado del lado americano y que usted antes hubiera reconocido como perteneciente á la ribera mexicana?—R. No, Señor.

P. ¿ En donde estaba el canal más profundo del río, generalmente?—R. Cerca del lado mexicano.

P. ¿ Sírvase usted describir de que modo fué destruido el borde mexicano por la violencia del agua?—R. La mejor ilustración que yo puedo dar de este fenómeno es el de suponer que un grupo de trabajadores fueran minando por debajo un banco de arena con picas y palas etc., y que debido al gran peso causado por el cascajo ó arena en la parte superior, ésta se derrumbara y cayera dentro del río.

P. ¿ Ha visto usted á menudo caer estos bordes dentro del río?—R. Sí, Señor.

P. ¿ Que sucedía con ellos?—R. Se los llevaba el río. Era todo lo que se veía.

P. ¿ Usted sabe cuándo se construyeron las estacadas por los mexicanos en el otro lado?—R. Sí, Señor.

P. ¿ En que tiempo?—R. Hasta donde me es posible recordar, fué después de 1868 ó 1870. No puedo decir exactemente en que año.

P. ¿ Sabe usted con que objeto se construyeron?—R. Para protejer los bordes del río.

P. ¿ Contra qué?—R. Contra las avenidas que se llevaban las tierras.

P. Cuando usted vino por primera vez á este lugar ¿ dónde se hallaba, tomando como punto de referencia la estación de Santa Fé, el lugar donde atracaba el bote en este lado?—R. Recuerdo que una vez desembarqué á una distancia como de 300 pies del lugar en que está hoy el teatro de la ópera.

P. Cuando el borde de los Estados Unidos estaba inundado, el agua al parecer estaba comparativamente tranquila ¿ no es así?—R. Sí, Señor.

P. Y, durante las avenidas, depositaba gran cantidad de aluvión?—R. Según lo que yo alcanzo, sí, Señor.

P. De esta manera, los bancos de arena que se formaban quedaban cubiertos durante las avenidas ¿ no es así?—R. Sí, Señor.

P. Y entonces las arenas arrastradas por el viento Noroeste depositaban gran cantidad de tierra sobre esos bancos ¿ no es así?—R. La arena tiene corrientes naturales en ciertos lugares donde se deposita.

El Comisionado de los Estados Unidos manifestó, que no tenía que hacer más preguntas al testigo, por entonces.

El Comisionado mexicano, en seguida, hizo las siguientes preguntas al testigo:

P ¿ Tiene usted conocimiento técnico de las palabras aluvión, erosión y avulsión, y puede usted explicar técnicamente los cambios en el río?

Acerca de esta pregunta, el Comisionado de los Estados Unidos dijo que el no había presentado al testigo como perito, y que había evitado en lo posible el hacer uso de nombres técnicos al interrogar al testigo. Que no se acordaba de haber hecho uso de las palabras avulsión ó erosión ó preguntado al testigo algo que tuviese referencia á un punto científico.

R. Yo no sé lo que significan esas palabras ni tengo conocimientos técnicos.

P. ¿ Sufrió algún cambio el río desde 1852 á 1864?—R. Como he dicho antes, ha cambiado, cada año, un poco gradualmente; pero no de tal modo que se viera un cambio tremendo.

P. ¿ Usted recuerda de una grande avenida, la mayor que ha habido y que ocurrió por el año de 1862?—R. Yo considero que la de 1868 fué mayor ó igual á la de 1862.

P. ¿ Las corrientes que acaecieron entre 1864 y 1868 fueron de tal manera impetuosas que destruyeran casa y campos de labor?—R. Sí, Señor.

P. ¿ El río en 1868 tenía ya su actual curso, tal como se ve marcado ahí con líneas negras y en donde los puentes estan ahora poco más ó menos?—R. Yo no estaba aquí entonces.

P. Desde 1864 á la época presente, ¿ en qué períodos de tiempo cambió el río?—R. Yo no estaba aquí. Estuve ausente desde 1873 hasta 1883.

P. ¿ Cuando usted se fué en 1873, estaba el río como está ahora?—R. Yo no puedo decir.

Leída al testigo esta declaración, se ratificó en ella.

El tercer testigo Joseph Magoffin, ciudadano americano, fué debidamente juramentado para producirse con verdad por el Comisionado de los Estados Unidos, el cual lo interrogó en la siguiente forma:

P. Diga usted su nombre y su edad; en dónde vive y cual es su ocupación.—R. Me llamo Joseph Magoffin; tengo 59 años de edad; vivo en El Paso, Texas, y soy banquero.

P. Sírvase usted decir ¿ cuando vino usted por vez primera á este lugar?—R. Vine aquí en 1844.

P. ¿ Ha residido usted aquí continuamente, desde entonces?—R. Fuí á los Estados del Este, para ir á la escuela y regresé en 1856.

P. ¿ Ha estado usted ausente de aquí desde entonces?—R. Regresé en 1856 y viví aquí hasta Julio de 1862. Salí de nuevo y regresé en 1868. Desde entonces he estado aquí continuamente, excepto una que otra vez que me he ausentado para hacer viajes cortos.

P. Sírvase usted decir que oportunidades ha tenido de conocer el Río Grande y cuáles son sus caracteres y hábitos.—R. He tenido que hacer tanto con el río, aquí, como nuestros amigos del otro lado, procurando impedir que se llevara el Fuerte Bliss, que fué donde vivió mi padre por primera vez.

P. El Fuerte Bliss está hacia abajo de la Ciudad de El Paso, donde el río hace una vuelta y se interna al lado americano ¿ no es así?—R. Sí, Señor.

P. Se ha admitido por ambos Comisionados que, desde el año de 1852 cuando la línea limítrofe quedó fijada donde se ven las líneas coloradas en el mapa, el río ha cambiado hasta ocupar el lugar representado por las líneas negras. Sírvase usted decir lo que sabe respecto á este cambio ó cambios. Y cómo y cuando

tuvieron lugar, lo más aproximadamente posible?—R. En 1856 cuando vine aquí, encontré al Capitán Dodge de guarnición en el Fuerte Bliss, quien me manifestó que había crecido el río y me dijo avisara á mi padre que á la sazón estaba ausente de la casa, que el río había hecho un cambio frente á El Paso ó Franklin como se llamaba entonces y que si no tenía cuidado, se llevaría el Fuerte Bliss. Esto fué el año de 1856. Desde ese tiempo al en que yo me fuí de aquí, que fué el año de 1862, el río había hecho un cambio gradual inmediatamente enfrente de la tienda de Ketelsen y Degetau é hizo un cambio más grande, hacia el Oriente, más abajo de allí, siempre hácia el lado mexicano. De la casa de Ketelsen y Degetau á la presa el río, ha estado todo el tiempo sólidamente defendido con lo que se llama tenates, que no era otra cosa que grandes canastos de jara llenos de piedra que lo fortificaban en un espacio de 50 á 150 yardas. El Señor Velarde las hacía, y yo estuve presente y los vigilaba, de tiempo en tiempo, por estar personalmente interesado en que el río no se fuera por ese rumbo. Estos tenates aunque estaban bien hechos y fortificados, el río de vez en cuando los arrancaba y el agua pasaba por detrás de ellos; destruyendo los bordes del río y dejando los tenates de este lado de los Estados Unidos. Y cuando se llevaba, por ejemple, 50 yardas de cualquier terreno arriba de la casa de Ketelsen y Degetau, destruía aproximadamente 200 yardas en la parte de abajo. El río procuraba todo el tiempo meterse á México; su curso natural se inclina hacia ese lado. Este daño que causaba el río destrozando los bordes mexicanos, desde la casa de Ketelsen y Degetau, hasta enfrente de la fundición de abajo, daba por resultado que el río diera vuelta y se viniera directamente hácia el viejo Fuerte Bliss que era propiedad de mi padre. Nosotros teníamos allí 20 carros que se ocupaban de dos á tres meses seguidos, en procurar impedir que el río se llevara el Fuerte. Los bordes de la ribera mexicana hácia el Sud eran generalmente de 20 pies de alto, aquí en el Chamizal. Todos ó casi todos han desaparecido á la fecha, y todo lo que ha aumentado el terreno de los Estados Unidos se debe al derrumbamiento de esos bordes, al caer dentro del río. Este siguió en su obra de destrucción, como he dicho antes, hasta el año de 1862, que fué cuando me fuí á prestar mis servicios al ejército del Sur. Yo mismo pasé á mi madre por el río, en un bote para dejarla en el otro lado. El río estaba muy crecido y apenas podía pasarse. Cuando regresé en el año de 1868, el río se hallaba, poco más ó menos, como á la mitad de la distancia que actualmente hay entre la casa de Ketelsen y Degetau y su lecho actual. Gradualmente se ha estado yendo hacia el Sur, hasta que fué contenido por las obras construidas por el Señor Garfias, que se edificaron poco después que se construyeron los tranvías, lo que, según creo, tuvo lugar en el año de 1882, habiendo comenzado el Señor Garfias esa obra á mi parecer por el año de 1885. Ha sido un constante motivo de alarma y peligro tanto para Ciudad Juárez, como para mi propiedad que tengo aquí abajo.

P. Por lo que respecta á Ciudad Juárez ¿ no es cierto que el perjuicio fué causado en la ribera mexicana?—R. Sí, Señor.

P. Pero en lo tocante al Fuerte Bliss, es decir, dos millas más abajo ¿ no es cierto que el perjuicio fué hecho por usurpación gradual de dicho río sobre la ribera americana?—R. Sí, Señor.

P. Cual de esas dos riberas sufrió mayores perjuicios en su area: México, en Ciudad Juárez, ó los Estados Unidos, en el antiguo Fuerte Bliss?—R. Juzgo que sería igual.

P. ¿ Y todos estos cambios hechos por el río, ora hacia el Sur ora hacia el Norte, fueron siempre graduales, año por año, por corrosión en un lado y depósitos en el otro?—R. Sí, Señor.

P. Cuando el río crecía y derrumbaba los bordes de su ribera, ya Ciudad Juárez, del lado mexicano ó en el Fuerte Bliss del lado americano, podía usted ver ese derrumbamiento de sus bordes ¿ no es así?—R. Sí, Señor.

P. Pero al contrario frente al Fuerte Bliss en la ribera mexicana ambas playas aumentaban por depósitos de arena y aluvión ¿ no es así?—R. Sí, Señor, era gradual en ambos lados.

P. Ahora, pues, cuando se hacían estos depósitos durante las crecientes ¿ podía usted ver esta operación á la simple vista?—R. No, Señor. Verificándose todo esto debajo del agua, no se veía sino hasta que el río bajaba.

P. Después que el agua bajaba ¿ podía usted ver las adiciones hechas en las riberas inundadas, tanto frente á Ciudad Juárez, como al Fuerte Bliss, unas en México y otras en los Estados Unidos?—R. Sí, Señor.

P. ¿ Durante todos los años que ha vivido usted aquí, no es cierto que á menudo ha cruzado usted el río cerca de Ciudad Juárez?—R. Sí, Señor.

P. ¿ Qué tan á menudo?—R. Bien puedo decir que no trascurrían muchos días sin que cruzara el río.

P. ¿ En los primeros 25 años de vivir aquí, cómo pasaba usted el río?—R. Pasábamos á caballo, en carruaje y en botes.

P. ¿ En los viajes de ida y vuelta, no observó usted alguna vez un cauce abandonado en el lado americano del río?—R. Sí, en ocasiones lo había, cuando por el lecho del río que había quedado abandonado corría poca agua, hasta el año subsecuente en que volvia á reunirse con el otro, al llenarse de agua.

P. ¿ Pero todo esto se verificaba dentro de los dos bordes principales y por entre la arena?—R. Sí, Señor.

P. Cuando el río verificaba sus cambios frecuentes ¿ observó usted jamás quedase algo en este lado que usted reconociera por haber visto en el otro?—R. No, Señor, todo había desaparecido en el río.

P. ¿ Cual ribera era la más alta?—R. La mexicana.

P. ¿ Quedó alguna vez inundada?—R. Nunca que yo sepa.

P. Y la ribera de los Estados Unidos ¿ se inundó alguna vez?—R. Sí, Señor.

P.? En donde estaba el canal más profundo? ¿ cerca de Juárez?—R. Cerca de la ribera Sur del río.

El Comisionado de los Estados Unidos manifestó, en seguida, que no tenía más preguntas que hacer al testigo, por entonces.

Acto continuo, el Comisionado mexicano hizo las siguientes preguntas al testigo:

P. ¿ Desde 1856 á 1882 se han efectuado cambios en el lecho del río año por año?—R. Sí, Señor, se ha estado cambiando al Sur, siempre que ha habido avenidas.

P. Usted dice que ha estado cambiando año por año; ahora bien ¿ el río abandonó su primitivo lecho?—R. Sí. Como he dicho antes, en las grandes avenidas era probable que hubiese dos lechos del río, corriendo lado á lado; pero siempre iban gradualmente al Sud todo el tiempo.

P. ¿ Estuvo usted aquí durante las grandes avenidas del 1864 al 1868?—R. No, Señor. Yo no estuve aquí.

El Comisionado de los Estados Unidos hizo las siguientes preguntas al testigo:

P. Al decir usted que había dos lechos del río, que corrían lado á lado después de una gran avenida ¿ quiso usted decir que estaban actualmente separados esos lechos del río, ó simplemente que formaban dos de agua que corrían por la arena, en medio de las dos riberas principales?—El río inmediatamente frontero á Juárez, en donde abandonó su antiguo lecho, es decir, el que corría en el lado Norte y con motivo de la corrosión de la ribera mexicana, solía contener agua. Había á veces, dos brazos del río que corrían separadamente cuatrocientas ó quinientas yardas, para volver á entrar al río y ya no formar más que uno solo.

P. ¿ Existían algunos terrenos entre esas dos corrientes, ó solamente era un depósito de arena traída por el río?—R. Aquí no había más que tierra de aluvión traída por el río.

P. ¿ Y cuando las aguas del río estaban ba jas había dos corrientes ?—R. Cuando estaba medianamente crecido ó cuando estaba bajo, no había mas que una corriente, y estaba en la ribera del Sud.

P. ¿ Lo mismo que ahora sucede ¿ no es así?—R. Sí, Señor, lo mismo acontece hoy día.

P. Un poco más abajo del puente del Ferrocarril y del puente inferior de los tranvias, el río se hallaba separado por dos pequeños brazos ¿ no es verdad?—R. Sí, Señor.

P. ¿ Y juzga usted que existen ahí dos lechos del río?—R. No; no hay dos lechos del río, sino una ramificación del antiguo río, del que, en realidad, forma parte.

P. Todo el río tal como corre en la actualidad se halla propiamente comprendido entre la ribera americana y mexicana ¿ no es cierto?—R. Sí, Señor.

El Comisionado mexicano en seguida hizo las siguientes preguntas:

P. ¿ Puede usted explicar técnicamente qué se entiende por lecho de un río?—R. No, Señor.

El Comisionado de los Estados Unidos manifestó, entonces, que el no había introducido al testigo como experto.

El Comisionado de los Estados Unidos hizo en seguida las siguientes preguntas:

P. ¿ Cuando usted dijo que había dos corrientes en el río ¿ se refería usted á las mismas que existen ahora y ambas comprendidas entre las dos riberas principales, la americana y la mexicana?—R. Sí, Señor; simples corrientes que corren entre la arena, inmediatas una á la otra, entre las riberas americana y mexicana.

El Comisionado mexicano hizo entonces las siguientes preguntas:

P. Desde 1856 á 1862 ¿ abandonó el río su lecho?—R. Abandonó el antiguo y se cambió gradualmente hácia México.

P. Durante ese período, el canal marcado en el mapa con líneas coloradas quedó seco?—R. Seguramente que sí; aún ahora está seco.

P. Durante ese período de tiempo ¿ podía distinguirse ese lecho á la simple vista?—R. Unicamente cuando bajaban las aguas del río.

P. Cuando el río bajaba ¿ podía distinguirse ese canal?—R. Solamente de año á año. Se iba llenando conforme se inclinaba hácia el Sur.

Acto continuo, el Comisionado de los Estados Unidos hizo las siguientes preguntas:

P. ¿ Pudo usted distinguir en tiempo alguno, dos diferentes lechos del río que tuvieran, cada uno, dos distintas riberas y que solo una llevase agua?—R. No, Señor.

Leida que le fué al testigo esta declaración, se ratificó en ella.

El Comisionado mexicano manifestó que había preguntado á los testigos si conocían el significado de las palabras avulsión, corrosión y aluvión, para ver si conocían la acepción técnica de las palabras.

La Comisión mixta se disolvió á las 2.30 p. m., y quedó aplazada para continuar sus sesiones el sábado 18 del presente mes en la oficina del Comisionado mexicano.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Abril 18 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mexicano á las 10 a. m., conforme al aplazamiento de 16 del actual.

Don Inocente Ochoa testigo presentado por el Comisionado mexicano á quien ya se le tomó la protesta de ley fué repreguntado por el Comisionado de los Estados Unidos.

P. ¿ Señor Ochoa, habló usted en su declaración de 14 del actual de los pedazos de tierra que caían dentro de las aguas del río, de la ribera mexicana haciendo un ruido estrepitoso. Para que tal sucediera debían haber sido de gran tamaño. Sírvase usted fijar aproximadamente en piés su longitud, latitud y profundidad según usted lo haya notado?—R. Algunas veces la ribera estaba sobre el agua á mayor altura que otras y conforme á ella era el espesor de los trozos que se derrumbaban. Aproximadamente de una á tres yardas de ancho y de una á tres ó cuatro de largo.

P. ¿ A que altura aproximada estaban estas riberas sobre la superficie del agua?—R. En algunos lugares la ribera tendría probablemente media yarda, en otros lugares no tenía arriba de tres yardas.

P. ¿ Que sucedía con esos pedazos de tierra cuando se caían al río?—R. Es difícil para mí decirlo ó explicarlo. Todo se iba al agua. La ribera contiene dos clases de tierra, barro negro y arena. Supongo que ambos se los llevaba el agua.

P. ¿ Según lo que usted sabe, se los llevó el agua río abajo, quizá de una á diez millas, y las depositó en una ú otra ribera?—R. No puedo decirlo.

P. Dice usted que la ribera estaba formada de dos clases de terreno; barro y arena. ¿ Qué es lo que estaba arriba, el barro ó la arena?—R. El barro. La arena está siempre en el fondo de la ribera de este río.

P. ¿ Es arena movediza?—R. No sé lo que usted llama arena movediza. Es una arena pura blanca.

P. Esta arena comienza á ser carcomida por la corriente de abajo del barro lo cual ocasiona el posterior derrumbamiento del barro ¿No es así?—R. El agua carcome la arena debajo del barro y el barro se desploma.

P. Qué profundidad, poco más ó menos, tiene el agua por regla general junto á la ribera; cuando está carcomiendo la arena.—R. No me es posible decirlo.

P. ¿ Sabe usted que el río haya inundado la ribera mexicana frente á la estación de Sante Fé?—R. Allí no, pero lo he visto también inundar una milla mas abajo. También lo he visto inundar varias veces los terrenos llamados molinos de Córdova.

P. ¿ Hablemos ahora de la ribera americana. Qué carácter tenía esa ribera en la proximidad de la estación de Sante Fé?—R. La mayor parte de esa ribera desde media milla arriba de la

estación de Sante Fé, hasta aproximadamente tres millas abajo, eran playas abandonadas por el río.

P. ¿ Usted ha tenido grande experiencia acerca del río, por haberlo cruzado en estos 30 ó 40 años; no es cierto?—R. Si, desde 1858.

P. ¿ Como lo atravesaba usted?—R. A caballo, en coche, en bote y á pié.

P. En 1858, cuando por primera vez lo cruzaba usted en los botes; donde estaba el desembarcadero del lado americano?—R. No puedo decir.

P. ¿ Puede usted decir aproximadamente adonde estaba la ribera americana, á inmediaciones de la estación del Sante Fé en 1858?—R. Creo que la ribera estaba cerca de lo que es hoy la casa de Ketelsen y Degetau, poco mas ó menos.

P. ¿ Qué tan cerca estaba de la estación del Sante Fé, poco mas ó menos?—R. No puedo decir exactamente.

P. ¿ Recuerda usted una hilera de árboles al Sur de la estación del Sante Fé?—R. Recuerdo haber visto allí unos árboles pero no sé si son los mismos á que usted se refiere.

P. ¿ Corría el río cerca de esos árboles en aquella época?—R. Por allí cerca según creo.

P. ¿ Recuerda usted haber declarado hace dos años que el río corría cerca de esos árboles en 1858; los árboles pues existían hace dos años.—R. No estoy seguro que esos árboles sean á los que me referí hace dos años. Supongo que ellos son pero no estoy seguro de ello.

P. ¿ Si no son esos los arboles á que usted se refiere, pudiera usted bondadosamente acompañarnos y señalar aquellos á que usted se refería?—R. Iré si es necesario, no sé si los podré reconocer.

P. Son los únicos árboles grandes en aquella vecindad y es muy importante para el arreglo equitativo de este caso que sean identificados. Don José Ma. Flores declaró que los reconocía como existentes en la ribera americana por el año de 1868, y desearía confirmara usted su declaración dada hace dos años ó descubra otros árboles á los que quizá se haya usted referido en esa declaración.

Al llegar á este punto el Señor Ochoa manifestó, que deseaba visitar la localidad y examinar los árboles con Don José Ma. Flores y diferir la contestación á esta pregunta hasta después de ese examen.

P. ¿ Ahora bien Señor Ochoa en sus frecuentes travesías por el río, durante los primeros veinte y cinco años de su residencia aquí, notó usted alguna vez dos canales del río independientes, cada uno con dos riberas independientes, uno que llevara agua y el otro nó?—R. No había riberas independientes pero en el mismo lecho del río había dos canales como los hay ahora.

P. Cuando tenía lugar la destrucción de la ribera mexicana en las diversas épocas que usted ha mencionado ¿adonde estaba el canal más profundo, cerca del banco mexicano ó en otra parte?—R. Cuando se destruía la ribera del lado mexicano, por regla general, la masa grande de agua estaba próxima á dicha ribera.

P. ¿ En su declaración el Señor Magoffin habló de que los mexicanos protegieron su ribera por los años del sesenta y tantos, á veces, con lo que llamó tenates ¿sabe usted algo de eso?—R. Sí, Señor.

P. ¿ Sírvase usted describir esta clase de defensas, cuándo fueron usadas y cuántas veces?—R. Eran grandes cestos hechos de mimbre y rellenos con piedras que se ponían en el borde de la ribera que se trataba de defender. A veces se hacían defensas también con grandes troncos, plantados en el terreno y bien asegurados, con mimbres y piedras. No recuerdo en que época fueron usados, pero generalmente se hacía esto cuando la ribera del río estaba en peligro de ser arrancada por la corriente.

P. ¿ Sabe usted que se hayan empleado esas defensas antes de 1864?—R. Sí, Señor, sé que se emplearon algunas.

P. ¿ Se recuerda usted de algunas que se hayan hecho después de 1868?—R. Se hacían más ó menos de tiempo en tiempo cuando la ribera estaba en peligro de ser arrebatada por la corriente.

P. ¿ Creo que dijo usted en su declaración anterior que había habido ligeros cambios antes de 1864 y ligeros cambios después de 1868?—R. Sí, Señor, los hubo.

P. ¿ Quiere usted decir con esto que el total de los cambios durante esos períodos fué ligero, ó que cada uno de los muchos cambios fué ligero de por sí?—R. Quiero decir que cada cambio fué ligero de por sí.

P. ¿ Cuándo fueron construidas las defensas conocidas por jetties de Garfias y por quien?—R. Se empezaron por el año de 1885 y las construyó el Gobierno mexicano.

P. ¿ Sabe usted para que fueron construidas?—R. Para evitar que el río se llevara á la población.

P. ¿ Y hasta esta fecha lo han evitado?—R. Sí, Señor.

P. ¿ Tomando en conjunto el carácter de los cambios del río durante los largos años que lo ha observado usted, tales cambios no los considera usted en su conjunto graduales?—R. Como no entiendo de Derecho Internacional no puedo decirlo.

P. ¿ Ha sabido usted alguna vez que la corriente del río haya cortado la ribera mexicana y formado un canal nuevo y separado y un lecho de río, en las inmediaciones de Juárez?—R. No recuerdo nunca haberlo visto.

P. ¿ Sabe usted que el río haya hecho esto en otros lugares?—R. Sí, Señor, creo que el río hizo eso en frente á Tres Jacales.

P. ¿ En 1864 cuando la creciente del río destruía la ribera en Juárez, sabe usted lo que estaba haciendo en el viejo Fuerte Bliss, dos millas abajo de aquí?—R. Se llevó una vez parte del antiguo Fuerte.

P. ¿ La acción de las corrientes al destruir la ribera americana en el Fuerte Bliss era semejante en su acción al destruir la ribera de Juárez ¿ no es así?—R. Algo parecida; pero la ribera en el antiguo Fuerte Bliss estaba más baja que la del lado mexicano.

P. ¿ Y cuando la ribera americana en el Fuerte Bliss era destruida, que acontecía en el lado mexicano enfrente al Fuerte Bliss?—R. Dejaba playas lo mismo que hacía el río aquí cuando destruía la ribera en Juárez. También hicieron defensas en esa época, frente al antiguo Fuerte Bliss, de la misma manera que se hicieron aquí con tenates, árboles, etc.

El Comisionado de los Estados Unidas manifestó en seguida que, por entonces no tenía más preguntas que hacer al testigo.

El Comisionado mexicano hizo en seguida al testigo las siguientes preguntas.

P. ¿ La obra de destrucción hecha por el río entre los años de 1864 á 1868 fué mayor que en otros años en épocas anteriores ó posteriores?—R. El mayor cambio fué en 1864, cuando la destrucción de la presa tuvo lugar; despues los cambios fueron más graduales.

P. ¿ Atribuye usted los cambios del lecho del río á las obras artificiales hechas en el lado americano, además de los estragos que pudieran haber sido originados por las causas naturales del río?

El Comisionado americano manifestó, en este punto que no se había probado que se hubieran construido obras del lado de los Estados Unidos.

R. Creo que algunas obras hechas en el lado americano por el Capitán French arriba de la estación del Santa Fé hicieron perjuicios, y yo ví las obras personalmente.

P. ¿ Hágame usted favor de describir como efectuó el río su cambio en 1864?—R. Comenzó por romper la ribera del lado mexicano y continuó viniéndose hacia este lado durante ese año hasta que el volumen total del agua vino á dar contra la ribera mexicana, dejando tras de sí playas en lugar donde estaba el lecho viejo, y nunca ya volvió á su antiguo lugar. El río permaneció donde ahora está, más ó menos, aunque un poco más hacia el Norte.

P. ¿ Las defensas á que usted se refiere hechas con tenates eran tan débiles que la corriente ordinaria podía destruirlas ó era necesaria la violencia de las avenidas?—R. Creo que era necesaria la fuerza de las avenidas para destruirlas.

El Comisionado de los Estados Unidos preguntó al testigo lo siguiente:

P. ¿ Sírvase describir el carácter de las obras que había hecho el Capitán French del lado americano y su objeto?—R. La obra hecha por el Capitán French en el lado americano, fué con el objeto de evitar que el río avanzara hacia El Paso, y fué hecha con álamos grandes y creo con algunos tenates y alguna piedra

P. ¿ Que no fueron con el objeto de proteger la acequia que se dirigía á la ciudad de El Paso?—R. Creo que se construyeron también con ese objeto. Lo fueron para proteger á la vez la ribera y la acequia.

P. ¿ Cuando la fuerza de la corriente de aquel año destruyó la presa mexicana, qué, por este motivo no se cambió la corriente y se echó sobre la ribera americana cerca de donde estaban esas obras?—R. Sí, Señor, la corriente chocó contra el lugar á donde estaban las obras del Capitán French con fuerza muy grande.

P. ¿ Por aquel tiempo no hicieron ustedes algunas obras del lado americano?—R. Se construyó un canal allí, pero el mismo año la gente de El Paso lo cerró y allí terminó.

P. ¿ Sírvase usted decir aproximadamente en dónde estaba, cuán largo era y cuánto costó?—R. El lugar en donde estaba el canal apenas puede verse; costó como mil pesos, más ó menos.

P. ¿ Era un canal que partía abajo de las obras del Capitán French y que debía llevar las aguas por terreno del lado americano para impedir á la corriente golpear en el lado mexicano?—R. Sí, Señor, el canal fué construido al través de la playa para enderezar el curso del río, vaciándolo río abajo unas mil varas, creo yo, más ó menos.

Leida su declaración al testigo la ratificó.

La Comisión mixta se aplazó para reunirse á las 10 de la mañana el lunes 20 de Abril, en la oficina del Comisionado mejicano.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Abril 20 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mexicano á las 10 A. M., de conformidad con el aplazamiento del día 18 y en compañia de los testigos Flores, Ochoa, Provencio y Serna se dirigió al sitio en que están los árboles del lado americano y á los que se refiere al acta del Sábado. El Señor Flores declaró que estos árboles eran los mismos á que hizo referencia en su declaración.

El Señor Ynocente Ochoa, testigo presentado por el Comisionado mexicano, fué interrogado de la manera siguiente por el Comisionado americano y bajo la protesta de ley que ya tenía hecha.

P. ¿ Se acuerda usted de estos ocho árboles, que vemos aquí al Sur de la Estación del Santa Fé?—R. Sí, Señor.

P. ¿ Son los mismos árboles á que se refiere usted en su declaración de hace dos años?—R. Creo que si.

P. ¿ Recuerda usted haberlos visto por el año de 1858?—R. No recuerdo de tanto tiempo atrás.

P. ¿ Cuando poco más ó menos recuerda usted haberlos visto por primera vez?—R. No recuerdo en que año los vi por primera vez.

P. ¿ Diga usted aproximadamente el año en que los vió por primera vez?—R. Creo que los vi en 1864, aproximadamente. Desde entonces los he visto varias veces.

P. ¿ De que lado del río estaban en 1864?—R. Estaban del lado americano.

P. ¿ Que tan cerca de la orilla estaban cuando los vió usted por primera vez?—R. No me acuerdo.

P. ¿ Alguna vez los vió usted del lado mexicano del río?—R. No me acuerdo si sí, ó nó, porque los árboles á orillas del río crecen tan aprisa que no puedo decir que estos sean los mismos que vi entonces.

El Señor E. Provencio testigo presentado por el Comisionado mejicano, y á quien ya se le recibió la protesta, fué llamado á declarar nuevamente, el Comisionado de los Estados Unidos le hizo las siguientes preguntas:

P. ¿ Se acuerda usted haber visto estos árboles cerca de los cuales estamos, en años pasados?—R. De 1862 á 1864 vi aquí algunos árboles, creo que son los mismos, pero no estoy seguro.

P. ¿ Si estos son las mismos árboles que vió Ud. del 1862 al 1864, sírvase decir en que ribera del río se encontraban entonces?—R Creo que estaban del lado americano en 1862.

Jesús Serna testigo presentado por el Comisionado mexicano y que ya antes había protestado, manifestó que nunca había habido allí árboles por el año de 1862.

La Comisión mixta regresó en seguida á la oficina del Comisionado mexicano y volvió á tomar las declaraciones relativas á este asunto.

El Señor Don Inocente Ochoa, llamado nuevamente, fué preguntado por el Comisionado de los Estados Unidos, en la forma que sigue:

P. Con referencia á las obras que dice usted fueron construidas en el lado de los Estados Unidos, abajo de la presa mexicana, ¿ dichas obras fueron como las que nos describió usted del lado mexicano, construidas con fin puramente defensivo?—R. Creo que las obras fueron construidas con dos objetos. Para evitar que el río destruyera la ribera americana y al mismo tiempo para proteger la acequia que corría muy cerca de la orilla.

P. ¿ No es cierto que los habitantes del lado americano no tenían otro medio de proteger la acequia que colocarla fuera de los avances del río por que allí existían riberas altas de piedra?—R. Haciendo estas defensas era el medio más barato para proteger la acequia.

P. ¿ De que otra manera podían haberla protegido?—R. Podían haber cortado una zanja al pié de la loma, lo que hubiera sido más duradero pero mucho más costoso.

[illegible]

[illegible]

[illegible]

P. ¿ El pié de la loma está formado de roca, no es así?—R. Está formado de roca y piedra caliza.

Se le leyó su declaración al testigo el cual la ratificó.

El Señor E. Provencio, testigo presentado por el Comisionado mexicano y que protestó anteriormente fué llamado de nuevo y preguntado como sigue por el Comisionado de los Estados Unidos.

P. ¿ Entiendo que manifestó usted en su primera declaración, que no había habido cambios en el río del '60 al '64, es esto cierto?—R. Sí, Señor.

P. ¿ Qué edad tenía usted en 1860?—R. Trece años.

P. ¿ Cree usted que se podía acordar á esa edad que no había habido ningun cambio en los años que siguieron hasta 1864?—R. No, no hubo cambios notables enfrente al embarcadero.

P. Pudiera sin embargo haber habido algunos cambios, ¿ no es así?—R. Es muy probable que sí.

P. ¿ Sírvase describir la destrucción del lado mexicano de que habló usted en su anterior declaración, así como el tamaño de los pedazos de tierra que vió usted caer al río?—R. Cuando el río hizo su cambio alarmante, se llevaba pedazos de tierra de una y dos yardas constantemente, á intervalos de unos cuantos minutos. Cuando ocurrían estos cambios, la gente estaba en pié, desde la ribera, viendo caer los pedazos, y repentinamente alguna persona gritaba cuidado, que va á caer otro pedazo y la gente tenía que saltar atrás, para evitar caer al río.

P. De esta manera se llevó la tierra de los campos ¿ no es así?—R. Sí, Señor.

P. ¿ A qué profundidad la cortaba al desgarrarla?—R. Conforme el río formaba la curva, el volumen de agua era mas profundo naturalmente. Cuando el río se llevaba el terreno que se componía de dos clases de tierra; arena y barro, el agua facilmente se llevaba la arena y entonces el peso de barro que generalmente tenía una ó dos yardas de profundidad lo hacía caer. Debajo del barro había pura arena y no sé que profundidad tendría. La corriente era muy profunda.

El Comisionado mexicano hizo la siguiente pregunta:

P. ¿ Esta obra de destrucción se efectuaba solamente durante las grandes crecientes ¿ no es así?—R. Sí, Señor.

El Comisionado de los Estados Unidos hizo en seguida las siguientes preguntas:

P. ¿ Que pasaba con esos grandes pedazos de tierra que caían al río?—R. Se los llevaba el agua y desaparecían.

P. ¿ Que acontecía durante este tiempo en la ribera opuesta ó sea la americana?—R. Las playas avanzaban hacia este lado.

P. ¿ Debajo del agua?—R. Debajo del agua cuando el río estaba alto. Cuando el río estaba bajo se podían ver.

P. En algunos de los cambios que usted ha observado en el río después que las crecientes cesaban ¿ ha reconocido usted del lado

de los Estados Unidos, alguna cosa que hubiera usted visto anteriormente del lado mexicano, como árboles, casas, etc.?—R. Sí, Señor, álamos y un peral metidos entre la arena, pude observar la existencia de árboles en la arena frecuentemente, todos muertos.

P. ¿ Con referencia al peral sírvase describir aproximadamente donde estaba el árbol cuando usted lo vió en el lado mexicano?—R. El peral se hallaba poco más ó menos donde ahora está la fundición.

P. ¿ Describa usted aproximadamente en que lugar estaba en el lado americano?—R. Sobre la playa que el río iba formando al venirse hacia este lado.

P. ¿ Arriba ó abajo de donde fué arrancado?—R. Oh! muy abajo.

P. ¿ Que tanto más abajo?—R. Como no sé á quien pertenecía el peral, no puedo decir que tan lejos sería.

P. ¿ Si lo viô usted plantado en el lado mexicano antes de que fuera arrancado, y después lo vió usted depositado en la playa del lado americano, debería usted aproximadamente indicar la distancia entre el lugar donde estaba plantado y aquel en que después lo vió usted en la playa?—R. No he dicho que vi al peral plantado, pero supongo que pertenecía al lado mexicano porque muchos árboles fueron arrancados de aquí.

P. ¿ Nunca entonces ha reconocido usted alguna cosa depositada del lado americano, que haya usted conocido en el lado mexicano?—R. No, Señor.

P. ¿ Ha sabido usted que en alguna de las grandes crecientes, el río haya inundado la ribera mexicano?—R. En 1864 cuando ocurrió el gran cambio no inundó la ribera mexicana, ni tampoco desde '64 á la fecha.

P. ¿ Alguna vez ha sabido usted que la corriente del río haya cortado en la ribera mexicana un nuevo canal con dos bordes definidos y haya dejado el antiguo lecho con sus antiguas riberas intactas?—R. No, Señor; pero en ocho dias forma un nuevo lecho en algunos puntos y abandona el lugar donde estaba anteriormente.

P. En su declaración anterior dijo usted que el río había hecho muy lijeros cambios desde el '68. ¿Sabe usted cuando fueron construidos las jetties (espolones) conocidos por jetties (espolones) de Garfias?—R. Por el año de 1885.

P. ¿ Eso aconteció diez y ocho años después de que usted dijo que habían cesado los cambios notables ¿ qué objeto supone usted hubiera tenido construir esas obras que costaron ochenta mil pesos?—R. El objeto de esas obras fué que los habitantes ya estaban cansados de trabajar constantemente en las defensas del río y sin cesar temían que se llevase alguna vez toda la población. Cuando la Compañía del Ferrocarril hizo un puente estuvo á punto de ser arrebatado por las aguas y tuvieron que acarrear una gran cantidad de piedra para colocarla en el extremo del lado mexicano y por eso es que se construyeron esas obras.

Acto continuo el Comisionado mexicano hizo las siguientes preguntas:

P. ¿ Cree usted que esas obras fueron construidas para protegerse contra el trabajo lento y gradual del río ó contra las crecientes?—R. Fueron hechas para proteger á la población de ser destruida en la eventualidad de otra creciente como la del '64, porque la curva que el río había formado era peligrosa para la población.

El Comisionado de los Estados Unidos entonces preguntó lo siguiente:

P. ¿ Sírvase usted describir como comenzó la destrucción de la ribera mexicana cuando la creciente de '64 se llevó la presa?—R. Como ya dije anteriormente mis recuerdos solo llegan al año de 1860. En 1864 debido á una desviación del río en la presa referida y corriendo enteramente hacia el lado mejicano, echó la corriente al lado americano impetuosamente, contra una ribera de roca que ahora existe un poco abajó de dicha presa y al retirarse después de ese choque, la corriente se precipitó de regreso contra El Chamizal (hoy Mejia) lo cual fué causa de que fueran arrastradas por las aguas las tierras y las casas y aún se dió el caso de que muchas personas no hubieran podido salvar sus objetos particulares. El río desde esa época está sujeto á cambios frecuentes á causa de las fuertes avenidas, siempre acercándose á la ciudad.

P. ¿ Cuando la ribera mexicana se destruía aquí en Juárez, que ocurría del lado americano en el Fuerte Bliss?—R. Lo mismo que ocurría aquí.

P. La ribera de los Estados Unidos allí se destruía por la corriente del río de la misma manera que la ribera mexicana en Juárez ¿ no es así?—R. Eso aconteció á consecuencia de la curva que formó aquí; pero años después.

P. ¿ Sabe usted que los americanos ha yan puesto allí algunas obras para contener la destrucción, como los mexicanos lo hicieron aquí en Juárez?—R. No me recuerdo.

P. ¿ Que lado perdió más terreno por las cambios del río; el lado mexicano en Juárez, ó el lado de los Estados Unidos en el Fuerte Bliss?—R. No puedo fijar exactamente la pérdida, pero creo que Juárez ha perdido más terreno y más valioso que allá.

P. En todos los años posteriores á 1860, usted ha cruzado frecuentemente el río de uno á otro lado ¿ no es así?—R. Sí, Señor, frente á este lugar.

P. ¿ Alguna vez al cruzar el río observó usted dos lechos del río independientes, con dos riberas independientes cada uno, y llevando uno agua y el otro seco?—R. Al cruzar el río unas veces observé que estaba muy alto, y que al bajar de nuevo dejaba un pequeño arroyo del lado americano.

P. ¿ Que había entre este arroyo y el canal principal del lado mexicano?—R. Solamente arena.

El Comisionado mexicano en seguida hizo la siguiente pregunta:

P. Con referencia á la pregunta del Comisionado de los Estados Unidos respecto á los dos lechos del río; esta formación de dos corrientes sólo tenía lugar por la violencia de las grandes crecientes ¿no es así?—R. Sólo cuando el río bajaba de su altura máxima se observaba ésto.

La Comisión mixta en seguida levantó la sesión á las 2 p. m., para volverse á reunir tan pronto como las actas relativas estuviesen traducidas y copiadas.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Mayo 7 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos á las 10 A. M., conforme al aplazamiento del 20 del pasado, toda vez que las minutas de las juntas anteriores quedaron ya traducidas y firmadas.

En seguida el Comisionado de los Estados-Unidos presentó copias certificadas de tres distintos planos topográficos de terrenos pertenecientes á los Estados-Unidos, fronteros á Ciudad Juárez, México, denominados de la Concesión de Ponce, que deseaba ministrar como una prueba en el caso actual, con el fin de probar que el movimiento del río hacia el Sud ha sido gradual y continuo qurante todo el tiempo discurrido desde 1852 á 1855, en que se construyeron los *jetties*—espolones—mexicanos, y no limitado al período de 1864 á 1868.

El primer plano topográfico fué hecho en 25 de Marzo de 1853 por W. L. Diffendorffer, Topógrafo del Distrito de "El Paso," y es el original de la parte del terreno conocida por Concesión española de Ponce, que comprende casi todo el frente del río en que se han verificado los cambios, desde que se hizo la topografía de la línea divisoria. Este plano comprende una extensión de un poco más de 599 acres, y el Comisionado americano desearía que las líneas de este plano se fijasen en el mapa provisional que están preparando los ingenieros consultores. Con tal plano abriga la esperanza de demostrar que, entre la fecha en que se hizo la topografía de la línea divisoria, hacia el año de 1852 por el Comisionado Salazar, y la del plano de Diffendorffer, la ribera norte del río, se movió hacia el Sud, cerca de unos 21 metros ó sean 69 piés.

El segundo plano representa la topografía del propio terreno hecha el 8 de Febrero de 1859, por Anson Mills, Topógrafo delegado

del Distrito de "El Paso" y "Presidio." Este plano muestra la misma porción de terreno que la del levantado por Diffendorffer y que entonces comprendía 637 acres, lo cual da un aumento, debido á la acreción de la ribera del norte, de 38 acres, en cinco años; y, como quiera que la distancia de la última tirada del plano de Diffendorffer hacia la ribera del río, era de 1340 varas, en tanto que la misma tirada fijada por Mills era de 1423 y media varas, la ribera norte del río debe haberse retirado hacia México durante estos cinco años, á una distancia de 83 varas, ó sean 232 piés. El Comisionado de los Estados-Unidos solicita que este plano también se fije en el mapa provisional ya mencionado, á fin de aclarar estos cambios graduales, ocurridos antes de 1864.

El tercer plano abarca una parte del terreno que se extiende á lo largo del río, en la parte superior de la Concesión de Ponce, y que contiene dos caballerías, ó cerca de 216 acres, considerando al río tal como corría en 1827 cuando la Concesión Ponce se hizo y fué levantado por José Wilkin Tays, topógrafo del Condado de "El Paso" en 18 de Noviembre de 1872, y demuestra terminantemente en qué parte estaba entonces situada la ribera norte del río, precisamente desde un punto inicial de la Concesión de Ponce, arriba del río, y que comprende el frente del río de todos los terrenos disputados, arriba del límite inferior de este plano topográfico.

El Comisionado de los Estados-Unidos solicitó igualmente que se fijase también este plano en el mapa provisional tantas veces repetido, á fin de comprobar que entre 1872 y la construcción de los espolones y puentes por el año de 1885, la ribera norte del río se movió hacia México enfrente de la estación de Santa Fe cerca de unos 170 metros, ó sean 558 piés, añadiendo por acreción á las primeras acreciones, en estas dos caballerías, cerca de 27 y medio acres de tierra; mientras que el río á lo largo de la parte superior de estas dos caballerías, se movió hacia el Norte y tomó, de las acreciones de las dos caballerías, cerca de diez y nueve acres de tierra.

El Comisionado de los Estados Unidos solicitó también presentar como prueba pericial, los extractos siguientes de los informes oficiales, uno del Mayor O. H. Ernst del cuerpo de ingenieros de los Estados-Unidos, de fecha 12 de Diciembre de 1888, y otro del Ingeniero Ignacio Garfias, fecha 26 de Marzo de 1886 quienes fueron encargados por sus respectivos gobiernos para inspeccionar el Río Grande frente á Ciudad Juárez, México, y para examinar á la vez los caracteres y peculiaridades del río.

[Extracto del Informe del Mayor O. H. Ernst, del Cuerpo de Ingenieros de los Estados-Unidos.]

"Dejando un cañón pedregoso inmediatamente arriba de 'El Paso,' el Río Grande sale á una llanura aluvial de 5 á 6 millas de ancho, al través de la cual corre dentro de un cauce de su propia formación. Las riberas y el lecho son de tierra ligera y arena, facilmente movibles á impulso de las corrientes. El río es una corriente fangosa que acarrea materias en suspensión y que, á veces, lleva en proporción muy grande, materias sólidas. En tiempo de secas el agua deja de correr y, excepto en charcos separados, el lecho queda enteramente seco. Durante las crecientes de la primavera el agua sube á veces á una altura de 9 á 10 piés sobre el nivel más bajo, y corre con rapidez y muy cargado de sedimento. En esas épocas posee, así un gran poder reparador como destructor. Entre esos dos extremos y en distintas estaciones se observa toda una gradación de volumen y velocidad. El tamaño y carácter del río varían constantemente, y sus exigencias, en cuanto á la forma y tamaño del lecho, son igualmente variables. El trabajo del río para cambiar su lecho y acomodarlo á las exigencias del momento no termina nunca. El cauce tal cual existe hoy es la resultante final de todos los esfuerzos de la corriente, algunos de los cuales se han neutralizado y otros se han ayudado entre sí, pero su cauce no está fijo. Está mudando de una posición á otra, alterando su curso, corroyendo un borde reconstruyendo el opuesto formando islas y playas, y luego destruyéndolas. El resultado de los cambios naturales es más notable en las curvas, en donde la corrosión de la playa cóncava, es, á veces, continua por muchos años, como parece haber acontecido en El Paso. La localización del río en este lugar, tal como se encontró en 1855, hállase marcada con tinta negra en la lámina No. 1 que es una amplificación de una parte de la hoja No. 29 del reconocimiento, de la frontera entre México y los Estados-Unidos que me fué suministrada por usted, con su pliego de instrucciones. Sobre la misma lámina se vé en tinta roja, la localización del río, tal como la encontró el Señor Garfias, el Ingeniero mexicano, en 1885. Se observará que entre esas fechas ha habido muy considerable usurpación de territorio mexicano, con la correspondiente ganancia en la ribera americana. La distancia máxima entre la ribera de 1855 y la de 1885, es de cerca de cinco octavos de milla, y el área total añadida al territorio americano es de 490 acres aproximadamente. No he podido cerciorarme si este movimiento ha sido continuo, durante los treinta años, ó si ha sido intermitente."

Extracto del Informe del Ingeniero Ignacio Garfias.

"Todo cuerpo en movimiento tiende á seguir una línea recta, el cuerpo que se aparta de esta ley es porque encuentra resistencias á ese movimiento recto que lo obliga á seguir una línea distinta. Esto sucede con el agua de los ríos: teniendo siempre á correr en línea recta pero si se le opone uno de los bordes que la contienen

cambiará de dirección produciendo en dicho borde un choque lo irá destruyendo más y más. En las curvas de los ríos se produce este efecto que la ciencia llama avulsión. En el borde opuesto, es decir, en la parte convexa de la curva, por la misma tendencia del agua á correr en línea recta, al encontrase con una curva seguirá la tangente de esta curva por un trecho más ó menos largo en relación con la anchura del río y con la velocidad y, por consiguiente, el espacio comprendido entre la tangente y la curva, desde el punto de tangencia hasta el de desviación estará ocupado por agua muerta sin corriente ninguna, esto hace que allí se depositen las materias en suspensión y que se forme lo que técnicamente se llama aluvión y en términos ribèreños playas. Los dos fenómenos descritos son contrarios, puesto que el lado convexo de la curva gana lo que pierde el cóncavo y como esta evolución es constante y natural, si la mano del hombre no pone un hasta aquí, seguirá el río avanzando con perjuicio del lado cóncavo y dando cada día más terreno al lado convexo. Esto es exactamente lo que ha sucedido en el caso de que me ocupo. La curva del río frente á Paso del Norte presenta su lado convexo del lado mexicano y, de la comparación de los planos de la comisión de límites y el mío, resulta que el río ha caminado hacia el Sur Ik .735,00m. Sin necesidad de la inspección de los planos, el sólo aspecto del terreno en ambos lados del río, demuestra la invasión de la márgen derecha, por que toda la orilla del río en este lado está cubierta de tierra vegetal, cosa que no depositan las aguas, mientras que en el lado izquierdo no se vé sino arena y algun barro, materias ambas producidas por el aluvión; queda, pues, en mi concepto, suficientemente demostrada la pérdida de terreno sufrida por el lado mexicano."

Ambos extractos explican cientificamente el modo y manera con que se han efectuado los cambios del río y el presentarlos ha tenido por objeto, probar que los cambios fueron continuos y graduales por corrosión de una de las riberas y depósito de tierra en la otra y no por avulsión tal como está descrita en los artículos I y II del Tratado de 1884, por abandono de un lecho existente en el río y la apertura de uno nuevo, ó haciendo más profundo otro canal que no sea el que se marcó como parte de la línea divisoria.

El Comisionado mexicano repuso que no tenía inconveniente alguno en que constasen en el acta, tanto los planos topográficos levantados por los Señores Diffendorffer, Mills y Tays, como los extractos de los informes rendidos por los Señores ingenieros O. H. Ernst é Ignacio Garfias, tanto más, cuanto que todos esos documentos muestran de una manera palmaria que los cambios del río han sido intermitentes y, en ocasiones, violentos; y de ningún modo lentos y graduales, como lo exige el artículo I del Tratado de 1884, para que ellos pudieran alterar la línea divisoria establecida solemnemente por los tratados de 1848.

Que, á su vez, propone que se haga constar igualmente en esta acta, el extracto del informe del Señor Ingeniero Garfias, que viene á completar y aclarar el citado por el Señor Comisionado americano y que, á la letra, dice:

"Veáse ahora si el Gobierno mexicano está en su derecho para hacer obras que impidan la continuación de este perjuicio y de restablecer el cauce en el estado que guardaba, cuando las Comisiones unidas levantaron los planos de la línea limítrofe.

"La cuestión es perfectamente clara y sencilla. No hay que recurrir al examen de las doctrinas sobre el aluvión y la avulsión por que hay pacto, expreso, y, esto, nulifica todo lo demás.

"Se vé por estas convenciones que la línea del río ha de ser límite tal como la consignaron los planos de aquella época y que 'ninguna variación se hará jamás en ella' luego la línea limítrofe no es el río con los cambios que ha tenido ó pueda tener, sino la línea que ocupaba según los planos de las comisiones de límites y, por consiguiente, el terreno que hoy queda al lado izquierdo del río, pero al Sur de la línea que marcan los planos de la línea limítrofe, son mexicanos y puede el Gobierno mexicano disponer de ellos con entera libertad."

El Comisionado mexicano solicitó, por último, que los extractos y mapas presentados por el Señor Comisionado americano, se pasasen á los ingenieros consultores para que hiciesen las anotaciones respectivas en su informe y mapa que se les tienen encomendados.

Propuso igualmente que se señalara día para tomar su declaración á los Señores Samaniego y Varela, testigos, en su concepto, muy importantes en este asunto.

El Comisionado de los Estados-Unidos, repuso, que si bien es cierto que el Señor Garfias tiene la reputación de ser perito en ingeniería científica, no cree que sus conocimientos en la profesión sean tales, que lo autoricen á declarar como perito en derecho-supuesto que este extracto lleva por encabezamiento: "Parte legal"; pero que, á pesar de esto, está dispuesto á admitir dicho extracto en lo que valga.

Con la salvedad que antecede la Comisión mixta dispuso poner en las actas los testimonios recibidos, y recomendó á los ingenieros que marcaran sobre el mapa preliminar los tres planos topográficos, y que las notas de campo de dichos planos se incorporasen en las actas. (Véase abajo.)[a]

[a The plats and field notes of these three surveys do not appear in the original Spanish text of the Joint Journal of May 7, 1896, being merely incorporated by reference, probably because it was not thought necessary to translate the field notes. The plats and field notes appear in the English text of the Joint Journal of May 7th, at pp. 143–147.—Agent's Note.]

La Comisión mixta, en seguida, se aplazó á la 1 P. M. para reunirse en la oficina del Comisionado mexicano á las 11 A. M. del 12 del actual, para tomar las declaraciones de los Señores Samaniego y Varela, y otras que fuesen necesarias.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Mayo 12 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mexicano, conforme al aplazamiento de 7 del actual.

Por no haber concurrido los testigos Samaniego y Varela, el Comisionado de los Estados-Unidos, en seguida, presentó copias certificadas de cuatro documentos oficiales fechados en 21 y 24 de Septiembre de 1827, del archivo público de Paso del Norte, Libro 13, páginas 59, 60, 61, y 62, correspondientes al año de 1827, que contienen la petición de Juan María Ponce de León para obtener una concesión de dos caballerías de tierra frente á Paso del Norte, la propia concesión y el plano y datos á ella referentes. Estas dos caballerías son las mismas cuya acreción es objeto de estas informaciones y, para la mayor claridad del caso, propone que á los ingenieros consultores se les recomiende que fijen el croquis topográfico de las dos caballerías en el plano que están preparando, y que los documentos arriba mencionados sean agregados á las actas.

El Comisionado de los Estados-Unidos también presentó un extracto certificado de la declaración de José Sánchez, hoy difunto, ante la Corte del Distrito de El Paso, Texas, en el período de sesiones de Noviembre de 1884 "Johns versus Crosby," que tiende á probar la localización de la primera casa de Ponce, y que dicha casa, con las adyacentes tierras fué destruida por la inundación de 1830; y, presentó además, un copia certificada de un decreto del alcalde de Paso del Norte, fechado en 4 de Mayo de 1830, en que desechó la pretensión de Juan María Ponce de León, de que se le restituyesen tierras equivalentes á las dos caballerías en que la inundación habia minorado su propiedad, y se le notificó que el gobierno no podía darle en posesión más que la playa de arena que el río había dejado. Pide que este testimonio sea incorporado en el acta del día.

TESTIMONIO DE JOSÉ SÁNCHEZ.

Vivo en Paso del Norte, México, donde nací. Tengo 78 años pasados. Fuí empleado en Chihuahua 6 ó 7 años, cuando joven; y, salvo esa época, he vivido en Paso del Norte. Conocí á Ponce de León perfectamente bien desde que era yo muy joven, hasta que murió. Casi siempre he ocupado empleos del gobierno mexicano. He sido Jefe Político y regidor. Fuí alcalde varias veces y capitán en un regimiento de auxiliares. Soy actualmente Síndico del Ayuntamiento y representante del ministerio público.

Ponce vivió en Paso del Norte y también en este lado. Iba de un lado á otro desde que adquirió propiedades aquí, y vivió en ambas partes. Construyó de este lado en un principio una casa aquí, que el río se llevó, y luego Ponce construyó otra más arriba.

Sé donde corría el río en 1827; conocí la casa de Buchanan, que debería estar hoy situada en la manzana 33, lote 140, como lo indica el mapa. En 1827 se hallaba lejos del curso del río. En 1827 el río corría adonde esta ahora el puente sobre la acequia, entre la esquina Sureste de la manzana 33 y la Suroeste de la 181, abajo de la Casa de Corte en la calle de El Paso.

El río corría casi en línea recta desde el puente hasta cierta distancia pasando por la acera Sur de la nueva cárcel, por la esquina Noreste de la manzana 198.

La casa de Ponce fué destruída por el agua, allá por el año de 1830; el río cortó por la nueva Casa de Corte, en la manzana 209, pasando á la acera Sur de ella, cerca del grupo de álamos, entre la nueva cárcel y Casa de Corte. Se puede ver hoy el terreno por donde corría el río. Sé donde está la casa de Stanton, en el cuadro Noroeste de la manzana 205. En 1827 el río estaba á alguna distancia de esa casa, cuando cambió, después de la inundación, por allí corría.

DECRETO DEL ALCALDE DE PASO DEL NORTE.

No. 2. Conforme al dictamen de la Comisión que fué á inspeccionar las tierras que quiere usted que se le repongan, en la parte que las minoró la creciente del río, el Ayuntamiento ha resuelto que solamente la playa que la inundación dejó unida á sus tierras le sea concedida, no pudiendo devolverle á usted su antigua concesión por los perjuicios que ocasionaría al vecindario.

Dios, etc.

JOSÉ M. CÓRDOVA.
Julian Bernal, *Sec.*

PASO, *Mayo 4 de* 1830.

AL SEÑOR DON JUAN MARÍA PONCE DE LEÓN.

Es copia de su original sacada fiel y legalmente hoy día 1° de Mayo de 1833, á petición de Juan María Ponce de León, en papel simple por faltar el sellado, á reserva de ser requesto por el intere-

sado. En fe de lo cual yo, Ramon Diaz, tercer alcalde constitucional de este lugar, lo certifico y firmo con los testigos de asistencia. Doy fe.

RAMÓN DÍAZ.

TESTIGO: LÁZARO ARCHULETA.
TESTIGO: JOSÉ ANTONIO BARELA.
Honorarios $2.00 lo juro.

El Comisionado mexicano manifestó que no tenía inconveniente en que se fijasen en el mapa preliminar las dos caballerías de la Concesión de Ponce y que constaran en las actas la declaración de José Sánchez y el acuerdo del alcalde de Paso del Norte, que van insertos, por que los cree útiles para la historia del caso, pero que no los considera de importancia en lo que se refiere á la cuestión debatida de derecho internacional.

Los ingenieros consultores fueron instruidos como queda dicho.

La Comisión mixta se aplazó á las 12-30, para reunirse de nuevo el 13 á las 11 a. m. á fin de tomar las declaraciones de los Señores Samaniego y Varela.

F. JAVIER OSORNO. ANSON MILLS.
JOHN A. HAPPER. S. F. MAILLEFERT.

[Acta.]

EL PASO, TEXAS, *Mayo 14 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos, para tomar á petición del Comisionado de los Estados-Unidos, una declaración adicional al Señor Don Inocente Ochoa. No habiendo podido concurrir por enfermedad á dar su declaración el Señor Doctor Don M. Samaniego ante la Comisión mixta, las dos veces que ha sido citado, se deja esta diligencia para otro día.

El Señor Don Inocente Ochoa, testigo presentado anteriormente por el Comisionado mexcano, fué llamado nuevamente á declarar y el Comisionado de los Estados-Unidos le hizo la siguiente pregunta:

P. Tengo entendido que en el anterior interrogatorio que se le hizo á usted, afirmó que había perdido algunos terrenos por los cambios del río. ¿ Se servirá usted señalar en qué época ó épocas perdió usted esos terrenos y á, ser posible, determinar el año ó años?—R. El terreno á que me referí en mi declaración del 14 de Abril, lo perdí hace unos tres ó cuatro años, por los años del 92 al 93; pero desde aquella época el río ha devuelto esos terrenos al lado mexicano, y, por lo tanto, he recobrado lo que había perdido.

El Comisionado mexicano hizo al testigo la siguiente pregunta:

P. Á pesar de lo que dice usted ahora ¿ afirma usted, como dijo su declaración anterior, que los cambios ocurridos en 1862 y 1864 fueron violentos?—R. El mayor cambio ocurrido fué violento como ya lo manifesté y se verificó in 1864.

En seguida el Comisionado de los Estados-Unidos hizo al testigo la siguiente pregunta:

P. ¿ Y hubo violencia alguna en el cambio que se llevó el terreno de usted en 1892 ó 1893?—R. El río se llevó todo este terreno mío, en un año: y supongo que fué con violencia.

El Comisionado mexicano hizo, entonces, la siguiente pregunta:

P. ¿ No considera usted como violencia el hecho de arrasar con casas árboles y bordes, y destruir hasta las obras de defensa?—R. Así lo considero, pero debo hacer la explicación que el río arrasaba con esas casas, árboles y tierras con menos violencia unas veces que otras.

Leída su declaración al testigo la ratificó.

El Comisionado mexicano presentó, en seguida, algunas comunicaciones del abogado F. W. Daugherty, dirigidas á la Comisión mixta, y, después de una conferencia privada con el mismo Mr. Daugherty, convinieron ambos Comisionados no tomar en consideración oficialmente estos documentos hasta el próximo lunes, supuesto que el abogado Daugherty declaró que podía cambiarlos ó enmendarlos.

La Comisión mixta se aplazó para reunirse el sabado á las 10 a. m., del día 16 de Mayo, en la oficina del Comisionado mexicano, para tomar su declaración al Señor Doctor Samaniego.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Mayo 16 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mexicano, conforme al aplazamiento del 14, para tomarle declaración al Señor Doctor Samaniego.

El Doctor Mariano Samaniego, testigo por parte de México, prestó la protesta de ley, ante el Comisionado mexicano, y formuladas las siguientes preguntas las contestó como sigue:

P. Diga usted su nombre, edad, residencia y ocupación.—R. Mariano Samaniego, 64 años, vivo en Juárez, México, propietario y médico.

P. ¿ Cuanto tiempo ha residido usted aquí?—R. Desde 1844 pero he estado ausente varias veces. Del 45 al 51 estuve ausente en el

colegio. De Noviembre de 52 á Diciembre de 59 estuve también ausente y desde el 72 á la fecha también he salido. Mi ausencia más larga fué del 77 al 79.

P. ¿ Ha ocupado usted puestos oficiales aquí?—R. He sido Jefe Político, Gobernador del Estado de Chihuahua y Diputado á México.

P. ¿ Ya como particular ó como funcionario público, conoce usted algo de las peculiaridades características del río?—Conozco las peculiaridades y hábitos del río. El río cambia mucho por ser el terreno muy movedizo.

P. ¿ Dice usted que el río cambia mucho. Durante la experiencia de usted, ha podido notar que esos cambios ocurran durante todo el año ó durante las crecientes?—R. Generalmente durante las crecientes.

P. ¿ Cree usted que esos cambios fueron hechos por la violencia de las aguas?—R. Esos cambios ocurren en las curvas á lo largo del río y por la corrosión de la arena y son más perceptibles cuando se retiran las aguas.

P. ¿ Estaba usted aquí en 1852? ¿ Puede usted decir aproximadamente por donde corría el río en aquella época?—R. Estaba yo aquí en 1852. Según lo que recuerdo—por la distancia que teníamos que recorrer en este lado hasta el río, y del otro lado hasta la Casa de Corte antigua, que estaba en el lugar de la vieja casa de Ponce manzana 17—el río debió correr por donde está ahora el Hotel Windsor.

En seguida el Comisionado mexicano explicó al testigo el plano preliminar y le preguntó lo siguiente:

P. El levantamiento hecho por Emory y Salazar, indica que el río corría más abajo de donde usted lo coloca. ¿ Como se explica usted eso?—R. Como era yo joven, no estoy muy seguro, por que no me fijaba mucho en esas cosas y lo que sé es más por referencias de residentes antiguos. Ultimamente he hablado con Antonio Acosta, y anteriormente con Jesús Serna, el Padre Ramón Ortiz y Nepomuceno Varela; estos dos últimos ya difuntos.

P. ¿ Desde 1852 se acuerda usted de algunos cambios en el río. Si es así, diga usted de cuales?—R. En el año de 1862 hubo una gran creciente. El río se extendía hasta el punto que se llamaba Franklin hoy El Paso. No se podían distinguir los objetos de un lado del río al otro. Por supuesto que durante las inundaciones causaban daño, pero más cuando las aguas se retiraban; la corriente siempre se inclinaba al lado mexicano. En 1864 la corriente fué tan fuerte que destruyó los jetties construidos en la ribera mexicana del río, pasando detrás de ellos, lo que impidió que regresara á su antiguo cauce.

P. ¿ Desde el año de 1864 han ocurrido algunos cambios notables en el río?—R. Sí, Señor, año por año, pero el más notable fué en 1868 y 69, debido á las obras construidas por el Capitán French.

P. De 1862 á 1864 en que tuvieron lugar esas grandes crecientes que ha referido usted, cuando se retiraban las aguas ¿no observaba

usted que el río ocupaba un canal diferente del que tenía antes y á distancia perceptible uno del otro?—R. Sí, Señor, los cambios eran tales que á veces durante la noche, el río se llevaba de 50 á 100 yardas. Hubo caso que gente que vivía en casas distantes 50 yardas de la orilla del río, de la noche á la mañana tenía que huir del lugar por motivo de los avances del río y en muchas ocasiones no tenía tiempo de cortar sus trigos ó cosechas. Se llevaba arboledas sin dar tiempo á la gente de cortar los árboles.

P. Los cambios del río que refiere usted ¿fueron todos perceptibles á la vista?—R. Sí, Señor.

P. Por fin, no sabe Ud. como es notorio que esos cambios no tienen lugar en el invierno?—R. No hay nunca cambios durante el invierno.

El Comisionado mexicano manifestó en seguida que no tenía más preguntas que hacer al testigo.

El Comisionado de los Estados Unidos, entonces, le preguntó lo que sigue:

P. ¿ No ha perdido usted mismo algunas tierras por estos cambios del río?—Sí, Señor.

P. ¿ Cuantos lotes de tierra ha perdido usted?—R. Recuerdo haber perdido tres que fueron los que compré á Diego Ortega, á José María Sierra y Juan María Ponce; así como otros que ahora están parte de este lado y parte del otro lado del río.

P. ¿ En que año perdió usted la tierra que compró á Ortega?—R. En 1864.

P. ¿ En que año perdió usted la tierra que compró á Sierra?—R. La perdí gradualmente hasta el año de 1872.

P. ¿ En qué año perdió usted el lote que adquirió de Ponce?—R. Todos estaban en la misma línea.

P. ¿ Respecto á los terrenos que han sido parcialmente destruidos en que año se verificó tal destrucción?—R. Principalmente en 1862 á 1864 y después de esa época gradualmente hasta 1872, época en que siendo yo Jefe Político, se construyeron algunas obras de defensa.

P. Refiriéndome á las declaraciones rendidas por usted respecto á la localización del río en 1852, ¿opina usted aún que el río corría entonces por el lugar adonde se halla hoy el Hotel Windsor?—R. Por supuesto que si lo creía y tenía por un hecho, pero en vista del mapa de Salazar creo que debo haber incurrido en un error á ese repsecto.

P. ¿ Del 1852 al 59 hizo el río algún cambio notable hacia México por el lugar del Windsor Hotel?—R. Cuando regresé en 1859, el río estaba mucho más cerca de su localización actual.

P. ¿ Puede usted explicar en el plano por donde estaba en ese lugar en 1859?—R. Creo que el río corría por donde está hoy el gran canal de riego.

P. ¿ Y, ahora más abajo del río, por la Casa de Corte de El Paso, se acuerda usted del lugar por donde corría el río en 1852?—R.

Más abajo de la Casa de Corte el río corría por lo que se llamaba el Fuerte Magoffin cerca de la actual residencia del Señor Magoffin.

P. Refiriéndome al testimonio que usted rindió hace dos años ante las autoridades civiles de Juárez, encuentro que la respuesta al quinto interrogatorio pudiera explicar la declaración actual en lo referente al Windsor Hotel. En esa respuesta dice usted que se acuerda particularmente que cuando se fué usted en 1844 el río corría por donde está ahora el Windsor Hotel. ¿ No confundirá usted la época de 1844 con la de 1852?

La respuesta al quinto interrogatorio dada por el testigo ante el Señor Don Felipe Seijas, Juez de Distrito, el 4 de Septiembre de 1894, fué leida haciéndole notar que en su contestación al segundo interrogatorio dice que ha residido 33 años en esta población y sin embargo ahora manifiesta que vivió aquí del año de 1841 al de 1844:

"Que desde este año hasta el de cincuenta y nueve estuvo ausente pudiendo apercibirse cuando regresó que el río había cambiado su curso notablemente en el espacio de tiempo comprendido entre los años de cuarenta y cuatro y cincuenta y nueve; recordando que al ausentarse, en el año de cuarenta y cuatro, el río corría por donde ahora está el Hotel Windsor, poco más ó menos á la mitad de la calle de El Paso, Texas. Que el cambio se verificó del cincuenta y nueve á la fecha, de una manera brusca especialmente en el año de sesenta y cinco. Que respecto de los cambios que sufrió el río del cuarenta y cuatro al cincuenta y nueve nada puede decir, por que estaba ausente."

R. No es extraño que el río corriera por allí entre 1844 y 1852 por que los cambios eran muy graduales y habían árboles que impedían las incursiones violentas.

P. En la respuesta arriba citada dice usted también que estuvo ausente de 1844 á 1859. ¿Como explica usted tal discrepancia?—R. Probablemente por que no se asentó al tomarme declaración pues estuve aquí de visita en 1852.

P. ¿Cuanto tiempo permanecío usted de vista aquí en 1852 ?—R. Del mes de Marzo al mes de Noviembre de ese año.

P. ? Entonces ocho meses de residencia aquí en 1852 fué la única oportunidad que tuvo usted de observar la localización del río de entonces?—R. Sí, Señor, fué la única oportunidad que tuve de observar la localizacion del río en aquel entonces.

P. Ha declardo usted que el Capitán French construyó algunas obras del lado de los Estados Unidos en 1868 ó 1869. ¿Sabe usted con qué objeto las construyó?—R. Para echar el río sobre este lado, por que amenazaba destruir una acequia que él tenía del lado americano.

P. ¿ Que no eran necesarias esas obras para protejer la acequia del lado americano?—R. No lo creo así, por que la acequia no estaba bastante cerca para encontrarse en peligro.

P. ¿ No es cierto que la ruptura de la presa del lado mexicano echó la corriente con fuerza contra el lado americano en el punto donde se construían dichas obras?—R. Desde un principio la corriente se dirigía hacia el lado mexicano. El Capitán French construyó sus defensas sobre un lugar pedregoso, que no era susceptible de ser arrasado por el río?

P. ¿ Pues que objeto tenían las defensas, si el río no podía invadir por allí?—R. El objeto era de echar el río más al lado mexicano por que tenían terrenos que acrecerían.

P. ¿ Luego las obras fueron para protejer esos terrenos que estaba temeroso fueran destruidos?—R. Sí, Señor, y también con mala intención, por que no tenía simpatia por los mexicanos, como lo expresaba frecuentemente en público.

P. ¿ Y usted se hubiera compadecido del Capitán French si hubiera perdido sus terrenos?—R. No estaban en peligro.

P. Acaba usted de declarar que uno de sus objetos era protejer los terrenos que poseía.—R. Su principal objeto era dañar al lado mexicano.

P. En la época en que construía el Capitán French sus obras del lado americano ¿ no construyó usted también algunas obras del mismo lado americano ?—R. No, Señor.

P. ¿No cavó usted un canal ó hizo arreglos para cavarlo á fin de desviar el río al través de las playas de arena del lado americano?—R. En primer lugar no era yo autoridad en aquella época; y como particular le compré al Señor W. W. Mills algunas tierras, y en seguida con el asentimiento general allí se cavó un canal del lado de los Estados Unidos con el objeto de minorar la corriente y su golpeo sobre el lado mexicano, todo lo cual fué hecho con autorización de las autoridades de los Estados Unidos.

P. ¿Quienes eran esas autoridades?—R. No lo recuerdo pero el consentimiento era notorio, pues habia más de 100 hombres trabajando en el canal.

P. Esos 100 hombres que trabajaban en el canal ¿eran mexicanos ó americanos?—R. Eran hombres que vivían del lado mexicano y de los más amagados por el río.

P. ¿ Es cierto que en aquella época había pocos americanos residentes en el lado americano?—R. Muy pocos.

P. ¿ Había alguna organización municipal del lado americano en aquella época?—R. Había allí autoridades; una Aduana y una Corte de Distrito.

P. Dice usted que el Capitán French tenía malas intenciones hacia el lado mexicano, por que trataba de echar la corriente contra este lado ¿ que usted tenía buenas intenciones cuando trataba de echar la corriente al lado de los Estados Unidos?—R. Nuestro objeto no era dañar al lado de los Estados Unidos, pero solamente desviar una parte de la corriente.

P. Creo que éste era el objeto de ustedes, pero igual generosidad podría aplicársele al Capitán French ¿ No es así ?—R. El Capitán French construyó sus defensas en un lugar en que no eran necesarias como protección y sí dañaban á este lado. Respecto al canal muchos de los habitantes fueron á verlo y á mofarse por que creían que nuestras intenciones eran de echarles todo el río á ese lado mientras que no teniamos otras que las de construir un canal inofensivo que sirviera para el riego.

P. ¿ No cegaron los americanos el canal poco después de que fué construido?—R. No, Señor. Se cegó por si mismo, por que no corrió más el agua por él.

P. Dice usted que compró el terreno del lado americano por donde se hizo el canal. ¿ Á quien lo compró usted?—R. Al Señor W. W. Mills.

P. ¿ Tiene usted escritura registrada de ese terreno?—R. Existe la escritura y el plano hecho por Mr. Fountain. Ne sé si fué registrada la escritura.

P. ¿ Cuanto costó la construcción de ese canal y por quien fué pagado?—R. No costó nada pues los mismos interesados en protejer sus propiedades hicieron la obra.

P. ¿ Cuantos días de trabajo, aproximadamente, se emplearon para construir este canal?—R. Nueve días y cerca de cien hombres.

La Comisión mixta se aplazó, para reunirse el lunes en la oficina del Comisionado mexicano, á las 10 A. M., y dió por terminado el examen del Doctor Samaniego.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

CIUDAD JUÁREZ, MÉXICO, *Mayo 18 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado Mexicano á las 10 A. M., conforme al aplazamiento del dia 16.

Los Señores T. W. Dougherty y A. H. Kirby se presentaron en seguida en representación de los reclamantes Ronquillo y otros; y entregaron á la Comisión mixta un oficio de ellos fecha de hoy.

La Comisión mixta informó á esos señores refiriéndose á la petición y documentos presentados por ellos en la reunión del 16, así como á su oficio de hoy, que les contestaría la Comisión mixta en su próxima reunión del 20.

El Sr. Dougherty dijo que tenía un ingeniero hábil, el Sr. Sam. Wade, para ocuparse del trabajo de ingeniería, persona bien conocida del Coronel Mills.

El Comisionado mexicano manifestó que un testigo muy importante, el Doctor Samaniego, le había informado que el Sr. Dough[illegible]y se había quejado ante su gobierno en México por haber des[illegible]*dado los* intereses de sus clientes.

El Señor Dougherty replicó que había mandado una carta al Presidente de México, con una petición de algunos de los reclamantes en la que pedían que se dieren instrucciones para que se tomaran sus declaraciones antes de llegar á una decisión final acerca de la línea divisoria.

El Comisionado Mexicano manifestó que era necesario tener esos documentos ó copias, para que la Comisión mixta pudiera dar una contestación completa relativa á esos asuntos. A este repuso el Sr. Dougherty que entregaría á la Comisión mixta copias completas de las comunicaciones hoy ó mañana.

El Comisionado Mexicano preguntó en seguida al Sr. Dougherty porqué no presentó la petición que remitió á Mexico, á la Comisión Mexicana; á lo que replicó el Sr. Dougherty que habia sido informado que toda declaración tendiendo á colocar la línea más al Norte del río viejo, tal cual lo marcan los planos de Emory y Salazar sería inútil.

Para la mejor comprehensión de ambos gobiernos se incluyen, en las actas del dia y en el órden que se mencionan, los siguientes documentos: la primera petición á la Comision mixta firmada por el Sr. T. W. Dougherty, con la declaración jurada de Price Cooper; la declaración de Quirino Lara; la comunicación de 18 de Mayo de 1896 firmada por T. W. Dougherty y A. H. Kirby; y la carta dirigida á la Comisión mixta de los Sres. Dougherty y Kirby.

A la Comisión Internacional de Límites, de los Estados Unidos de America y los Estados Unidos de México, en sesión en El Paso, Texas.

Los reclamantes de tierras entre el Río Grande, tal como corrió por los años de 1852 y 1853, entre los dos países, y tal como por donde ahora corre, por conducto del subscripto, su abogado piden que antes que se acuerde cual es la línea divisoria, se presenten á Vdes. y declaren los siguientes testigos, á saber: Price Cooper, Sam Bean, y John Clark, todos ciudadanos americanos. Adjunto una declaración jurada de Price Cooper y estoy informado que los otros testigos declararán de conformidad, asi como el Sr. Samaniego, que ha sido Gobernador de Chihuahua y Jefe Político de Juárez, y Quirino Lara, cuya declaración va adjunta, los cuales han dicho ser cierta. Francisco Varela, de El Paso, Texas, Jesús Telles, Marcelo Armijo, Francisco Provencio, José M. Sierra, Gregorio Herrera, Dolores Bernal, todos ellos residentes en Juárez, México; y también Roy Bean, que vive en Langtry, Texas, T. T. Teel, Sam Wade, que viven en El Paso, Texas, los que atestiguarán que el Rio Grande corría por donde Price Cooper dice en su declaración jurada que corrió en 1852 y 1853. Price Cooper vive en Ysleta, Texas, Sam Bean en Las Cruces, N. M.; también George Baylor vive en Ysleta, Texas, y Juan Clark en San Elizario, Texas. Pe[illegible]

[illegible] que estos testigos sean interrogados acerca de donde corrió el río en 1852 y 1853 inclusive; y como cambió su canal. También pido este honorable tribunal se examinen esos testigos y me sea permitido interrogarlos acerca de donde corría el río en 1852 y 1853, y hacer las preguntas muy importantes para determinar adonde estaba la línea del río en 1852 y 1853, y que se lleve á los testigos al terreno para enseñar donde corrió el río en 1852 y 1853, etc.

T. W. DOUGHERTY,
Abogado de los reclamantes

ESTADO DE TEXAS.
CONDADO DE EL PASO.

Yo, Price Cooper, con el objeto de evitar gastos y molestias, al regresar á El Paso, Texas, hago la siguiente manifestación que servirá como declaración ante la Comisión Internacional de Límites de los Estados Unidos de América y los Estados Unidos de México: Vine á El Paso, Texas, en 1882 y he vivido en El Paso é inmediaciónes desde entonces. Ví á los ingenieros trazar la línea divisoria entre los Estados Unidos de América y los Estados Unidos de México, entre Juárez, México, y El Paso, Texas. Sé por donde corría el Río Grande en 1853, un poco más al Norte de donde está la casa redonda del ferrocarril de Sante Fe, de allí en dirección al Este á la Calle 10. en El Paso; de allí por abajo de la Opera y de allí con dirección al Este hacia unos arboles viejos entre las calles de Oregon y Utah, pasando por el corral de los trasportes Pomeroy. De allí adonde está ahora la cárcel, y de allí en dirección al Noreste y al Norte de la estación del Ferrocarril Texas y Pacific. En seguida atravesaba las calles de Overland y San Antonio con dirección á Concordia. Corrió allí hasta el año de 1862, en que cambió repentinamente cerca del lugar en que voltea el tramvía en la calle 7. El cambio fué ocasionado por una creciente del río, abandonado éste el canal antiguo y formando uno nuevo. Todos los cambios del río han sido bruscos, por el abandono de un canal y la formación de otro nuevo. Sé que el Capitán French hizo una presa para evitar que el río volviera á su antiguo cauce de 1853 y formó uno nuevo. El Capitán French era ciudadano americano y era Town Marshal del pueblo de El Paso, Texas.

PRICE COOPER.

Jurado ante mí hoy 21 de Abril de 1896.

T. H. CONKLIN,
Notario Público, El Paso, Texas.

ESTADO DE TEXAS,
CONDADO DE EL PASO.

Yo, Quirino Lara, doy aquí mi declaración y este es mi testimonio que puede ser usado ante la Hon. Comisión Internacional de Límites de los Estados Unidos de América y los Estados Unidos Mexicanos.

Yo nací el año de 1840 en Paso del Norte, Partido del Barrial, y viví en dicho Partido hasta el mes de Diciembre de 1879, que me cambié al Partido del Chamizal al lado Norte del Río después de su cambio en 1862, donde he vivido hasta la fecha. Por el año de 1872 fuí Gobernador del Pueblo indígena del Paso. Yo vi correr el Río Grande ó Bravo por los años de 1846, cuando la batalla de Temascalitos, y en 1853 mil ochocientos cincuenta y tres, cuando se enarboló la bandera americana en La Mesilla; lo vi correr en esos años entre Paso del Norte (hoy C. Juárez) y El Paso, Texas, en el lugar que voy á explicar: Pasaba por donde está ahora el tanque de agua junto á la casa redonda del Ferrocarril de Santa Fe, seguía al Este por lo que ahora llaman Calle Primera, pasando por el lado Sur de el City Hall y la casa de Opera, y mas adelante por donde está ahora la cárcel del Condado y seguía al Oriente por el lugar que ocupa la calle de Overland poco arriba de la Estación del Texas y Pacífico y seguía con dirección á Concordia. Así corrió el Río hasta el año de mil ochocientos sesenta y dos (1862) en cuyo año cambió repentinamente al lugar donde está ahora la llanta ó camino de fierro que pasa por la Smelter chica, y al llegar al punto donde está ahora la calle de Campbell volteaba al Noreste con dirección al fuerte de Magoffin. El Río no cambió gradualmente barranquiando sino que trozó y formó un nuevo canal. Yo trabajé en un canal que construyó el Dr. Mariano Samaniego en el año de 1869 para cambiar el Río á su antiguo lugar, pero al mismo tiempo el Capitán French construyó un dique más arriba por lo cual el Río no se fué por el canal que hizo el Dr. Samaniego.

QUIRINO LARA.

A la Comisión Internacional de Límites de los Estados Unidos de América y los Estados Unidos de México, en sesión en El Paso, Texas.

Los reclamantes del territorio disputado entre El Paso, Texas, y Juárez, México, por conducto de sus abogados, T. W. Dougherty y A. H. Kirby, aceptan su proposición hecha el 13 del actual á nosotros de hacer un levantamiento topográfico líneal de esa parte de la línea divisoria entre los dos países entre El Paso, Texas, y Juárez, México, y, harán dicho levantamiento tan pronto sea posible y terminado que sea les será sometido á Vdes. También aceptamos su proposición de permitirnos consultar sus mapas, notas de campo y todos los datos en general que poseen Vdes. relativos á la fijación de la línea hecha en 1852 por ambos gobiernos. No esperamos ni pretendemos sacar esos documentos de sus respectivas oficinas, pero sí que á nuestros ingenieros y abogados se les autorice para examinar los datos de campo originales y mapas de ambos gobiernos relativos á la línea de 1852, ratificada en 1853. También pedimos que tan pronto como terminemos nuestro levantamiento de dicha línea, que procedan Vdes. á tomar las declaraciones de algunos de los diversos testigos que les hemos

presentado, porque juzgaremos necesario establecer por declaraciones verbales la exactitud de la línea levantada por nosotros. Hemos empleado á agrimensores competentes para hacer estos trabajos y estamos listos á comenzar desde luego, y presentaremos á Vdes. nuestros ingenieros y agrimensores tan luego como lleguen. Uno de los cuales ya está aquí y comenzará tan luego como Vdes. lo deseen; los demás estarán aquí para el 19 ó poco después.

T. W. DOUGHERTY,
A. H. KIRBY,
Abogados de los reclamantes.

EL PASO, TEXAS, *Mayo 18 de 1896.*

(Aquí la contestación.)

EL PASO, TEXAS, *Mayo 18 de 1896.*

A los Señores T. W. DOUGHERTY y A. H. KIRBY,
Representando á los reclamantes Ronquillo y otros,
El Paso, Texas.

SEÑORES: La Comisión Internacional de Límites, ante la que Vdes. presentaron su petición del 15 del actual ha determinado que en respuesta se les diga lo siguiente:

Primero: Que desde luego ha habido una mala inteligencia por parte de Vdes. al suponer que la Comisión Internacional pudiera poner en tela de juicio la línea limítrofe marcada por los Señores Salazar y Emory en el año de 1852 y solemnemente aceptada y reconocida por los gobiernos de México y de los Estados Unidos.

Segundo: Que aceptada como una verdad legal esa línea, el único error admisible sería en el que hubieran incurrido los ingenieros consultores Señores Corella y Dabney al transcribir y fijar esa línea en el mapa preliminar y presentado por ellos mismos á la Comisión mixta. Pero como ambos Comisionados tienen la mayor confianza en la aptitud y pericia de dichos ingenieros y ningún motivo fundado para suponer que han incurrido en error alguno, por consiguiente no tienen que hacer por si mismos investigación alguna á este respecto. Sin embargo, están dispuestos á recibir, para hacer el uso que de ellas convenga á su debido tiempo, las puebas que se le presentaren en contrario.

Tercero: Que en cuanto al examen de testigos solicitado por los Sres. Dougherty y Kirby, la Comisión mixta está en su deber de repetir que no estando en sus facultades alterar ni en un ápice los tratados de Guadalupe Hidalgo en virtud de los que se determinó la línea divisoria entre México y los Estados Unidos, tienen que aceptarla y reconocerla y no hacer investigación alguna sobre este punto.

Por lo mismo advierte á los Sres. peticionarios que el examen de los testigos que presenten solo se reducirá á esclarecer el modo en que el río Bravo del Norte haya podido cambiar del lugar que ocupaba en 1852 según el trazo de los Señores Salazar y Emory hasta al que actualmente ocupa en 1896 en el plano presentado por los ingenieros consultores de la Comisión, los Sres. Corella y *Dabney.*

Así de común acuerdo convinieron ambos Comisionadoes en contestar la petición de Vdes.

Respetuosamente de Vdes.

ANSON MILLS,
United States Commissioner.

F. JAVIER OSORNO,
Comisionado Mexicano.

El Comisionado Mexicano manifestó en seguida que no tenía más testigos que presentar en este caso por la parte de México, salvo que quería que constara el hecho de que el río no cambia en el invierno. A lo que replicó el Comisionado de los Estados Unidos que si bien no podría asegurar que nunca había cambiado en el invierno, lo cierto es que jamás ha sabido ú oido decir que se efectuaran cambios durante esa estación, por la razón que las crecientes ocurren muy raras veces—si acaso las hay—durante los meses de invierno. El Comisionado de los Estados Unidos agregó que como el Comisionado de México había cerrada las declaraciones, que él no tenía nada más que presentar por parte de los Estados Unidos.

La Comisión mixta en seguida se aplazó á las 12.30 P. M., para reunirse de nuevo cuando las actas del 16 y 18 estén listas para firmarse.

F. JAVIER OSORNO.
S. F. MAILLEFERT.

ANSON MILLS.
JOHN A. HAPPER.

[Informes Del Ingeniero Americano.]

EL PASO, TEXAS, *Mayo 13 de 1896.*

Al CORONEL ANSON MILLS,
Comisionado de los Estados-Unidos
Comisión Internacional de Límites Fluviales,
El Paso, Texas.

ESTIMADO SEÑOR: Ayer en una conferencia que tuve con el Coronel Corella, Ingeniero Consultor de México, dijo que creía que sería mejor para nosotros, rendir informes separados en el caso de "El Chamizal," No. 4, y que después de examinados por los Comisionados, si no resultaban muy discordantes, juntos podríamos firmarlos.

Estoy de acuerdo con él, salvo la mejor opinión de usted, y respetuosamente presento á usted mi informe adjunto.

El mapa preliminar ya presentado, fué firmado por el Coronel Corella y por mí.

De usted muy respetuosamente.

F. B. DABNEY,
Ingeniero Consultor.

EL PASO, TEXAS, *Mayo 13 de 1896.*

Al CORONEL ANSON MILLS,
Comisionado de los Estados-Unidos,
Comisión Internacional de Límites Fluviales,
El Paso, Texas.

ESTIMADO SEÑOR: Tengo la honra de presentar el siguiente informe sobre el caso de "El Chamizal" No. 4.

Por acta de 6 de Noviembre de 1895, la Comisión mixta recomendó á los ingenieros consultores, hicieran un "mapa prelim nar que pudiera servir á los Comisionados para delimitar los terrenos disputados."

El 16 de Diciembre de 1895, comenzamos á trazar la topografía del río entre Juárez y El Paso, y la terminamos el 5 de Enero de 1896, incluyendo en dicha topografía parte de ambas ciudades y todo aquello que se creía pudiera relacionarse con el caso. De dichas notas fué formado el bosquejo preliminar ya presentado. Además copias de datos existentes en la oficina del agrimensor del Condado de El Paso, que fijan puntos del río en diversas épocas, han sido fijados en este plano con las fechas de su levantamiento y nombres de los agrimensores.

El río de 1852 fué tomado de la hoja mejicana No. 29 de la Comisión de Límites de 1852—esta hoja está firmada por el Mayor Emory y el Señor Salazar, Comisionados—y va marcada con tinta roja en el mapa. Fué ampliado con el pantógrafo, de una escala uno en sesenta mil, á uno en cinco mil, y su posición en el plano fué fijada por la latitud y longitud computada, desde el punto inicial de la línea divisoria, tal cual lo da la hoja mexicana No. 29. La localización del punto inicial no concuerda con la hoja de los Estados-Unidos del propio número en cuanto á longitud, por manera que en el mapa se han marcado ambos meridianos.

La hoja No. 29 de la Comisión de los Estados-Unidos de 1852, fué desechada por nuestro Gobierno, por haberse opuesto á tomarla en consideración el Comisionado mexicano, por la razón de que, si alguna vez fué firmada, las firmas parecen haber sido raspadas. Una nota al calce indica que fué hecha la topografía seis meses después de la mexicana. Ha sido amplificada de una escala de uno en sesenta mil á uno en cinco mil y va en el plano marcada con líneas de rayas intermitentes.

Además del mapa preliminar, otro definitivo se ha formado que ahora lo presento á usted respetuosamente.

En las actas de 14 de Abril de la Comisión mixta, se recomienda á los Ingenieros Consultores, rindan un informe con todas las noticias posibles relativas á los cambios del río, desde 1852 hasta la fecha actual, "comprendiendo dicho informe todos los datos posibles y señales que puedan encontrarse en el terreno disputado, tales como árboles, bordes antiguos del río, y otros de interés."

Como lo demuestra el mapa, el río en 1852 y en su curso actual, forma una larga curva casi al rededor de la ciudad de El Paso, teniendo su lado convexo contra la ribera mexicana.

El terreno en la ribera mexicana es de marga negra hasta una profundidad de 1 á 2 metros, debajo de la cual está primeramente una marga arenosa, y después arena gruesa y cascajo. El lado convexo de la curva formada por el lecho del río, echa á la corriente contra esa ribera, y la arena y cascajo se deslavan por su acción, dejando por lo tanto el material más resistente arriba, sin sostén, lo que le hace por lo mismo, caer al río. Esto es lo que ha pasado aquí indudablemente, hasta que el Gobierno Mejicano construyó jetties—espolones—para protejer sus riberas contra invasiones posteriores del río. El terreno al Norte, entre el lecho actual del río y el de 1852, es como lo demuestra el mapa, de marga arenosa mezclada con materias vegetales, debajo de lo cual hay arena gruesa y cascajo; este terreno, al parecer, está nivelado y aparentemente es de tierra traida de otro lugar—made land—, pues en ningún lugar comprendido entre la ribera Sur del río de 1852 y la ribera Norte en su localización actual, hay huella de algún canal abandonado, ni existen bordes de alguno otro antiguo. Todos los árboles que indican mucha edad y que se hallan dentro del territorio disputado ó cerca de él, han sido localizados cuidadosamente y van marcados en el plano.

De usted muy respetuosamente.

F. B. DABNEY,
Ingeniero Consultor.

[Acta.]

EL PASO, TEXAS, *Mayo 30 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos, á las 11 A. M., de conformidad con el aplazamiento de 18 del actual, y se firmaron las actas de las juntas celebradas el 16 y el 18 de Mayo.

El Comisionado mejicano, en seguida, expuso, que habiendo terminado la investigación del caso de "El Chamizal" No. 4, había recibido instrucciones para marchar á Méjico, á consultar con su Gobierno,—durante la conclusión del mapa del ingeniero consultor mejicano,—y que la decisión final en este caso y en el de la "Isla de San Elizario," la daría inmediatamente después de su regreso de Méjico, que se verificaría en dos semanas.

El Comisionado de los Estados-Unidos replicó, que él entendía que el ingeniero consultor por parte de Méjico, estaba recopilando en un mapa datos con objeto de demostrar una depresión, indicando un canal abandonado del río, y que estaba preparado para demostrar que esta depresión tuvo lugar en Mayo de 1891, por el rompimiento de la corriente del río al través de donde se ve en el mapa el canal de riego, y arrebatando los cuatro puentes que estaban sobre dicho canal y formando lo que el entiende que el

ingeniero consultor mejicano dice ser una prueba de un canal abandonado.

El Comisionado de los Estados-Unidos, insiste en que antes de la partida del Comisionado mejicano, el caso de la "Isla de San Elizario" debía ser finalmente determinado, pues según él cree todas las pruebas necesarias se han recogido y ninguna de las partes reclamantes desea hacer mayores investigaciones en el caso.

El Comisionado mejicano replicó, entonces, que él no había hecho ningún estudio del caso de la isla, porque á su entender, no puede resolverse, sino hasta que el de "El Chamizal" esté decidido.

El Comisionado de los Estados-Unidos expuso, en seguida, que había recibido instrucciones de su Gobierno, con objeto de subordinar la investigación referente á la distribución de las aguas del Río Grande, á la pronta conclusión de los trabajos que, conforme al Tratado, ocupan á la Comisión. Que después ha recibido instrucciones para hacer una mayor y más extensa investigación relativa á la distribución de las aguas del Río Grande y concluirla para el 6 de Enero próximo; que había tenido noticias que debía de tratar de este asunto con el Comisionado mejicano, Señor Osorno, pero que después ha sabido que hubo algún cambio respecto á la persona que ha de representar á Méjico en este asunto. Que él por su parte había dado instrucciones á su ingeniero, el Capitán Derby, para que estuviera aquí el 1 de Junio, y deseaba preguntar el Comisionado mejicano, si habría alguna persona dispuesta á conferenciar con él y su ingeniero el Capitán Derby en la fecha designada ú otra posterior, y quién era esa persona.

El Comisionado mejicano replicó, que consultaría con su gobierno sobre este importante asunto y telegrafiaría al Comisionado de los Estados-Unidos, tan pronto como tuviera una decisión.

La Comisión mixta se aplazó á las 12 M., para reunirse otra vez á la vuelta de Méjico del Comisionado mejicano.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Junio 24 de 1896.*

Habiendo regresado de Méjico el Comisionado mejicano, y aprovechando desde luego la oportunidad de seguir las juntas, la Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos, á las 10 A. M.

En seguida el Comisionado mejicano presentó en español el informe manuscrito que consta de setenta y cuatro páginas y un mapa de su ingeniero consultor, Teniente Coronel Corella, relativo al caso de "El Chamizal" No. 4, y dijo que estaba dispuesto á proceder al examen de este caso con la prontitud que el Comisionado de los Estados-Unidos deseara.

El Comisionado de los Estados-Unidos replicó, en seguida, que ésta era la primera noticia oficial que tenía de este informe, no obstante que él entendía que el ingeniero consultor por parte de Méjico, había estado trabajando en él unos ocho meses. Que el Comisionado de los Estados-Unidos había presentado el informe de su ingeniero, al Comisionado mejicano hace ya mucho tiempo y todos los demás papeles y pruebas que él creía esenciales en el caso; pero que ahora necesitaba mandar traducir el informe del ingeniero consultor de la Comisión mejicana para poder comprender qué influencia podía tener en el caso, antes de tomarlo en consideración. Que todo esto lo haría tan pronto como fuere posible, y, una vez terminado, avisaría al Comisionado mejicano, si por su parte deseaba presentar algún testimonio más para rebatir lo que estuviese asentado en el informe.

El Comisionado de los Estados-Unidos, en seguida propuso proceder al examen del caso de la "Isla de San Elizario" No. 10, el que á su entender estaba completo con respecto á las investigaciones hechas por ambas partes interesadas.

El Comisionado mejicano manifestó que estaba dispuesto á entrar en la discusión del caso de la isla, cuando el Comisionado de los Estados-Unidos lo deseara, pero que la decisión debería firmarse después de convenir ó disentir en el caso de "El Chamizal."

El Comisionado de los Estados Unidos, en seguida manifestó, que en la junta de la Comisión mixta, que se verificó el 30 de Mayo último, había dicho al Comisionado mejicano que no estaba determinado de una manera clara, en su información quién era la persona con quien debería conferenciar con relación á la investigación sobre la distribución de las aguas del Río Grande, y la presa internacional, á lo cual el Comisionado mejicano contestó que él consultaría con su gobierno sobre este importante asunto y que telegrafiaría al Comisionado de los Estados-Unidos, tan pronto como recibiera una decisión, pero que él, el Comisionado de los Estados-Unidos no ha tenido posteriormente conocimiente del asunto, y ahora pregunta, de nuevo, con quien debe de conferenciar respecto á este negocio.

El Comisionado mejicano, dijo, que como él sabía que vendría antes que el Señor Ibarrola, como en efecto lo hizo, no consideró necesario el telegrafiar, y que el Señor Ibarrola sería la persona que tratará con el Coronel Mills sobre el asunto concerniente á la presa internacional.

La Comisión mixta se aplazó á las 11-30 A. M., para reunirse mañana, Junio 25, en la oficina del Comisionado de los Estados-Unidos.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Informe del Ingeniero Mexicano.]

C. JUÁREZ, *Mayo 26 de 1896.*

Estudio técnico é Informe que el Ingeniero Consultor mexicano presenta á la Comisión mixta, en virtud del acta de 14 de Abril de 1896.

LIJEROS RASGOS GEOLÓGICOS DEL VALLE DE EL PASO.

Á nueve kilómetros al Norte de El Paso, las montañas cercanas al *thalweg* del Río Bravo, dán lugar á mesetas y planicies arenosas, en cuyas profundidades se forman bancos de aluvión. Estas planicies y mesetas, al extenderse, se enlazan con las bases de las montañas que esparcidas se descubren en todas direcciones; y, aúnque se estrechan aquellas, para formar la angostura de "La Jornada del Muerto," se extienden en seguida hacia el Norte; y yendo á rodear el pico más septentrional de la sierra de "Los Órganos," continúan en dilatados horizontes, constituyendo el vasto desierto comprendido entre el Río Grande y las cordilleras de Sacramento.

A unos cinco kilómetros al Noroeste de Ciudad Juárez, el canal del Río empieza á encajonarse; y siguiendo en suave descenso aumenta su estrechéz gradualmente, entre taludes profundos-verdadero paso cortado por las aguas al través de rocas sedimentarias y de formaciones calcareas estratificadas. Después de este accidente, el canal penetra en el valle, abierto; toma ensanches y acomodamientos entre los aluviones de la cuenca; y en fin, describe curvas más ó menos grandes dentro de su general dirección, N O. á S E.

El valle presenta las huellas de muy antiguos movimientos fluviales; y sus vestígios conducen á pensar en que las aguas han llegado casi á lamer las estribaciones de las montañas laterales, antes del azolve de la gran cuenca. Con efecto, muchos siglos representan las capas de los depósitos, alternadas de sedimento y

arena comprimida; de aluvión, arcilla arenosa, tobas calizas y cascajo, conglomerados calizos, y finalmente rocas, constituyendo el actual suelo, formado á expensas de los terrenos superiores desgastados por la fuerzas corrosivas.

El valle de El Paso, propiamente dicho, se halla circundado por la montaña Franklin al Norte; por los cerros de la presa al N O.; por movimientos y accidentes poco elevados al Oeste y Sur-oeste; que en forma de mesetas y colinas avanzan á enlazarse con la sierra Juárez situada al SurOeste; por el Sur los médanos, que girando al Sur Este, se ligan á la sucesión de lomas, las cuales paralelamente al Río, por el lado derecho, corren á eslabonarse con los estribos de las sierras de Guadalupe y San Ignacio; por el Este y por el Nor-este los bancos aluviales y colinas de conglomerado calizo, que desde El Paso y montaña Franklin se desprenden respectivamente rumbo á Ysleta, Socorro y San Elceario, formando los taludes del valle por el lado izquierdo del gran *thalweg*.

La montaña Franklin entre cuyas faldas del Suroeste, y el Río, se halla la ciudad de El Paso, Texas, se manifiesta, según el Doctor C. C. Hall, con formaciones calcáreas estratificadas, exhibiendo una inclinación muy uniforme de 45° hacia el O. S O. Sus pendientes presentan reventazones ígneas y dislocaciones, y en lo general su aspecto en conjunto reviste los carácteres del período cretáceo.

Las estratificaciones calcáreas son perceptibles desde el valle, por sus bien recortadas secciones de contornos curvilineos, especialmente en las pendientes lavadas del Nor-este.

El citado Profesor Hall opina que las tales estratificaciones pertenecen á la serie carbonífera visible cerca de Eagle Springs.

En los cerros de la presa y región del Nor Oeste predominan las rocas sedimentarias y calizas, acentuándose en lo general en las capas, el carácter de formación siluriana, con prolongación hácia el Oeste, según lo confirma la existencia de fósiles erráticos.

M. Wislizemus hace notar que la región accidentada al Oeste del valle, ó más bien en los cuadrantes occidentales, acusa un trastorno que dificulta su clasificación neta, una vez que la confusión visible de ejemplares ígneos en diversos grados de metamorfismo, entremezclados con los sedimentarios, y aún asociados entre sí por fusión, en contraste con las formaciones de aluvión que se encuentran también allí, no permite descubrir la conección que hayan podido enlazar á estas heterogéneas formaciones.

La sierra Juárez, según Hall ofrece carácteres similares á la montaña Franklin; lo mismo que la parte meridional del valle se

asemeja, en opinión de Wislizemus, á la porción del Oeste, sin mucha acentuación de carácteres, á lo largo de una faja que se desvanece al penetrar los médanos.

Las colinas y mesetas del Nordeste, formadas de conglomerados, se únen á los aluviones de la cuenca por el Este, y siguen, por el lado izquierdo limitando al valle en la dirección general que tiene.

Tal es el bosquejo geológico del valle de El Paso.

CARACTERES PECULIARES DEL RÍO.

Nadie ignora que la corriente apenas afecta los taludes cuando el canal está practicado al través de accidentes montañosos, especialmente si el terreno es de rocas, porque allí la corrosión es tan lenta y tan gradual como los siglos, y el Río no presenta otra variedad que la subida y el abatimiento de las aguas alternativamente. Para conocer sus caracteres peculiares, es necesario estudiarlos en el valle mismo, en la llanura; porque allí repite sus fenómenos, sus efectos, siempre análogos; aúnque en períodos desiguales; y acentúa netamente estos principales caracteres; cauce de cascajo vestido de sedimento y eflorescencias salinas; bordos de aluvión; alveolo variable entre antebordos, durante las bajas aguas; canal más profundo variable, durante las avenidas; curso general caprichoso y corriente acomodaticia en Zona porosa de anchura también variable; pero esta anchura entre límites que se demarcan donde acabando los aluviones y terrenos delesnables empiezan gradualmente los de mayor resistencia, compactos y tenaces á oponer taludes que impiden todo avance; una vez que se ligan estos generalmente á las pendientes en ascenso que sirven de eslabón algunas veces á colinas, á cerros, y aún en ocasiones á montañas de localización vecina. Se comprende pues que la zona de los movimientos puede en los terrenos bajos alcanzar dimensiones en latitud, que solo un estudio ad-hoc podría decubrir á la apreciación.

La Zona aquí, en este valle, varia entre 2 y 7 kilómetros en latitud. Siendo las crecientes y avenidas el factor principal de los movimientos del Río, de sus curvas caprichosas y de los cambios de lecho dentro de la Zona porosa, es necesario hacer de ellas una reseña lijera, en apoyo de lo que más adelanta me ocuparé en demostrar.

CRECIENTES: SU CLASIFICACIÓN SEGÚN SU VOLÚMEN; ÉPOCAS EN QUE SE VERIFICAN.

El caudal normal del Río actualmente, entre las ciudades Juárez y El Paso, Tex., apenas es un remedo mezquino del que siempre fué y era hasta 1885. Es bien sabido que desde esa fecha se cojen las aguas en Colorado y Nuevo México; y en fuerza de faltar tanto, el líquido se reduce á un hilillo miserable que se salva de un brinco, cuando no desaparece por completo en la estación de la seca.

Refiriéndome pues á las crecientes y sus efectos atrás de aquella fecha, parece natural que, antes de examinar los cambios sucesivos con las avances del Río, asigne primero una clasificación á las avenidas, en relación con su volúmen, y meses en que aparecen.

Nivel medio de subida (avenidas): Fines de Marzo y Abril.

Niveles máximos (crecientes): Mayo y Junio.

Nivel medio de bajada (avenidas): Julio y Agosto.

Las avenidas de accidente aparecen en Septiembre, y nunca llegan á superar la línea del nivel medio, al que apenas se aproximan.

En Octubre se inicia un abatimiento rápido (de las aguas), cuyo nivel ínfimo se establece en Diciembre, persistiendo en él durante Enero y parte de Febrero. A fines de este mes las aguas, por los deshielos, comienzan á subir imperceptiblemente; en Marzo acentúa yá el aumento; y al empezar Abril, dista poco del nivel medio, en marcha ascendente sobre las mismas etapas, ya expresadas.

En vista de tales oscilaciones (de nivel), juzgo importante dar una idea de la variabilidad de la sección mojada del cauce cuando las aguas están abajo de la línea del nivel medio; refiriéndome muy principalmente á la márgen y bordos más atacados por la masa líquida. Cuando ésta ha llegado á su normal abatimiento las orillas de la sección mojada determinan una zona angosta cuyo centro es el canal más profundo. Los mogotes, los bancos de arena y bordos intermediarios están completamente en seco; los antebordos y los grandes bordos del gran cauce aparecen retirados. La corrosión es nula entonces.

Mas tarde, empezando cierto aumento, el nivel del líquido produce una zona mayor mojada; y sucesivamente ván desapareciendo los accidentes y rugosidades del cauce. Si se presenta una avenida, el agua llega á los bordos intermediarios. La corrosión interior es nula aún; pero á medida que las aguas siguen subiendo, la zona mojada vá ensanchándose; y en fin, persistiendo las

avenidas, el líquido llega y sobre-pasa los bordos inferiores antebordos y espacios laterales; por último, las aguas á grados lentos, llegan á los taludes de los grandes bordos; estamos en la época en que éstas alcanzan el nivel medio; la corrosión empieza.

Cuando la corriente, pasando por todos los niveles superiores al medio, regresa á éste, ha producido yá todos los efectos de que es capaz; y poco tiempo después que ha iniciado, (á partir de aquí) su retirada—cesa la corrosión activa, pasando con transición rápida toda la escala hasta llegar á ser nula en fuerza del abatimiento.

Estos hechos, tomados de observación directa, y propias experiencias en el Río, me conducen á admitir que las corrosiones activas y las débiles, con que la corriente opera avances, al menos entre Juárez y El Paso, duran solamente cinco y hasta seis meses, cada año, cuando más.

Es conveniente saber, para ulteriores consideraciones, que en el bordo atacado, (que lo es el mexicano) el terreno acusa la existencia de una capa gruesa de arena fina á la altura del nivel de las aguas medias, sobre la cual descansa la capa del suelo vegetal; según pude descubrir en las excavaciónes que mandé practicar al efecto, para conocer los materiales que componen el subsuelo.

EFECTOS Y TRABAJO CORROSIVO DE AVANCE DE LAS GRANDES CRECIENTES.

Estudiando con detenimiento la topografía de esta localidad, la naturaleza del suelo de la cuenca, las capas porosas que la cubren y la dirección de sus declives, descubre uno desde luego las causas de los cambios sucesivos y movimiento de avance del Río hacia Ciudad Juárez.

Y siendo las grandes crecientes un factor principal determinante, conviene describir sus efectos, para la mejor inteligencia de esta tesis. Desde que el volúmen ascendente de las aguas alcanza á frotar el pié del talud del bordo acantilado exterior, es decir, poco antes de la línea del nivel medio; las filtraciones y la capilaridad cual gigantezcos inyectores operan y conducen con rapidez un remojo del subsuelo que avanza por las extensiones laterales. Después, cuando las aguas sobre-pasan aquella línea de nivel, las capas superiores de sedimento tierra vegetal y aluvión se saturan á su turno de humedad, por virtud de su naturaleza porosa, perdiendo así su cohesión; y como las capas de arena inmediatas en que descansan, nó presentan estabilidad, el suelo cede, produciendo

agrietamientos, los cuales son tanto más anchos y profundos cuanto más se acercan al cantil.

Las aguas con su trabajo minador socavan los taludes inferiores; y entonces, por falta de base de sustentación se desploman espesas cortinas, cuyos escombros son barridos en el acto. Si la corriente impetuosa persiste y continúa alzando su nivel, llega á los momentos del rebosamiento; el agua sale de cauce por las soluciones de continuidad, primero; después sobre los bordos mismos, haciendo así una inundación.

Estamos ahora considerando el fenómeno de una creciente máxima; las grietas se llenan de agua; el piso en los aproches se convierte en profundos lodazales, y no oponiendo más resistencia á las ondas impetuosas, son arrastrados por las aguas. Aquellas porciones altas, no invadidas por la inundación, ceden también por hundimiento; á la vez, que en otros puntos inmediatos de los bordos, se desploman "blocks" inmensos, cayendo enteros para ser también arrebatados por las aguas. Árboles, casas, sementeras, y todo cuanto es obstáculo ú obstrucción, desaparece dócilmente cediendo al empuje irresistible de la creciente formidable.

Cuando las aguas se retiran viene la desecación de los aproches; el suelo se contrae; las grietas aparecen, y el subsuelo es fango; entonces la acción minadora en los cantiles, derrumba paredones que en forma de largos lienzos ruedan en escombros á las profundidades de las aguas.

Esta destrucción, este avance, produce mas allá, en la banda opuesta, un suelo nuevo; un acrecimiento, por el depósito de aluvión con sedimentos del terreno desprendido de la márgen atacada.

Cierto es que estas crecientes son excepcionales, y por consiguiente no son frecuentes; pero las últimas de tal especie, de que recuerdan bien los ribereños de ambos vecindarios, operaron gran avance sobre Juárez, destruyendo la propiedad en la localidad del "Chamizal."

Generalmente á los períodos de abundancia en aguas han siguido otros de escacez; y el Río en sus cambios sucesivos ha estado sujeto á las alternativas de actividad variable, y de estacionamiento; con su cauce sobre las etapas recorridas desde 1827—á la fecha.

AVANCES DEL CAUCE EL RÍO EN 1827.

Véase la calca de esta localización, tomada por la sección americana (Ingenieros de lo Comisión) de una calca de plano, en poder del abogado P. F. Edwards.

Yá queda expresado, en la descripción geológica del valle que el canal del Río se estrecha al pasar por los cerros de la presa, y que sigue en dirección al S. E. en suave descenso para penetrar al valle abierto, rosando la región occidental de la ciudad de El Paso, Texas.

Al cortar el cauce la prolongación de la calle de San Francisco, á 1,000 metros desde la esquina del "Central Block," hace su primera curva, girando al Este, para penetrar en lo que hoy es la ciudad. En el cruzamiento de la calle 2ª con la de Santa Fé describe otra curva, muy suave, y arquea gradualmente al Nordeste, pasando á 100 metros al Sur de la actual Casa de Corte del Condado, para ir mas allá á girar al Sur Este y continuar en su descenso describiendo curvas de formas caprichosas. (Consúltese la copia que acompaño, de la calca antes citada.)

EL RÍO EN 1852.—LÍMITE.

Tomada su localización de la hoja No. 29 de la Colección del Comisionado José Salazar Ylarregui.

Fijado el cauce de 1827, según la anterior reseña, daré ahora una idea de localización del Río Límite, en 1852, yá que es necesario describir el avance entrambas fechas.

Bajando la corriente desde los cerros de la presa, según se ha repetido, efectuaba su primer cambio de rumbo, mediante curva, á la altura de la prolongación de la calle 5ª, á una distancia como de 700 m. ó con toda precision 765 metros, al Oeste-Suroeste del cruzamiento de la citada calle con la de El Paso; de allí rumbo al Este, y oblicuando al Este-Sureste, dirijase á pasar por donde hoy es la Estación del Ferrocarril Atchison, Topeka y Santa Fé, ó sea con precisión 25 metros al Sur de la bodega de carga, la márgen izquierda, ó 105 la márgen derecha. Después, al Sur de la esquina de la casa Ketelsen y Degetau, 80 metros la márgen izquierda, y 220 la márgen derecha. En seguida al Sur del cruzamiento de la calle Stanton con la calle 7ª . . . 35 metros la márgen izquierda y 200 metros la márgen derecha. Por último, al sur del cruzamiento de la calle South Campbell con la calle 7ª . . . 85 metros la márgen izquierda y 245 la márgen derecha; desde donde con curva suave, giraba al Nordeste, siguiendo en este rumbo para describir finalmente, valle abajo, sus diversas vueltas y sinuosidades.

APRECIACIÓN DEL AVANCE.

Desde la primera curva del Río de 1827, en el trayecto descensional de la presa, antes repetido, hasta la primera curva similar del Río de 1852, apreciada la distancia sobre la márgen derecha, hay 800 metros en números redondos.

Apreciada la separación de ambos lechos, en la dirección y eje de la calle South Campbell, resulta de 825 metros. Siempre entre las márgenes derechas. Ahora bien, no teniendo datos de que partir, para computar el tiempo en que realmente se hizo el tal avance, hay que aceptar, por lo pronto, las fechas en que se fijaron ambas localizaciones:—25 años las separan, según los mapas, y 800 metros en 25 años, dán 32 metros de avance anual.

RÍO EN 1873.

En el mapa que acompaña á este Informe, se vé localizado el cauce en 1873, el cual fué tomado por la sección americana, de esta Comisión, de las notas y mapa de J. W. Tays, existentes en la oficina del Ingeniero de Condado y de la ciudad de El Paso, Texas. Sin describir su cauce que tuvo, usaré la localización gráfica, para apreciar el avance respecto del Río en 1852.

Separación de márgenes derechas en el alineamiento de la calle de Stanton, 425 metros.

Ydem idem, sobre el alineamiento de la calle South Campbell, 400 metros.

Promedio: 413 metros en 21 años.

Avance anual, 20 metros.

RÍO EN 1889.

Fué tomada su localización gráfica en la calca adjunta, del plano oficial de la Ciudad de El Paso, Texas, firmado y sellado por el Mayor de la misma.

Comparémos los años de 1852 y 1889, para determinar el avance. Separación de márgenes derechas, en la dirección, de la Estación del Topeka y Santa Fé al puente superior de las tranvias, 520 metros en 37 años. Avance anual, 14 metros.

Repitiendo la apreciación, en el alineamiento de la calle de South Campbell, resultan 550 metros. Avance anual, cerca de 15 metros.

Hasta aquí solo se ha considerado la región frente á los puentes; pero para introducir en la serie los términos que dan las flechas de

las curvas, en su mayor separación, pasarémos á exponerlas. Cauces de 1827 y 1852, separación 850 metros en 25 años; Avance anual, 34 metros. Cauces de 1852 y 1895, separación, 1,400 metros en 43 años; Avance anual, 32.57 metros.

RESÚMEN DE LA SERIE.

Avances frente á los Puentes:	
1827–1852, separación	32. 00 por año.
1852–1873, separación	20. 00 por año.
1852–1889, separación	14. 00 por año.
1852–1889, separación	15. 00 por año.
Total	81. 00
Avance anual frente á los Puentes	20. 25
Flechas máximas entre los grandes curvas:	
1827–1852, separación máxima	34. 00 anuales.
1852–1895, separación máxima	32. 56 anuales.
1852–1889, 920 metros en 37 años	25. 00 anuales.
1827–1889, 1670 metros en 62 años	27. 00 anuales.
	118. 56
Promedio	29. 64

Es decir, 30 metros de avance anual en números redondos.

Conviene no olvidar que, siendo casi nula, durante seis meses de cada año, la destrucción de los bordos, por las razones ya expresadas, en otro lugar, el promedio obtenido de 30 metros, se debe duplicar; es decir, 60 metros es la cifra definitiva, que representa el avance anual.

Tampoco debe olvidarse que dicho promedio está muy obligado á cartabón—una vez que los períodos de crecientes excepcionales, por grandes; y por otra parte los de secas persistentes, constituyen transiciónes demasiados irregulares que rompen la lenta y gradual sucesión supuesta para el cómputo anterior. En confirmación y apoyo de los estacionamientos, véase en el mapa la localización del lecho del Río en 1881, tomado de notas y plano de A. M. Randolph, en poder del Ingeniero de Condado, cuán poco difiere del cauce de 1889, en la región anterior á los puentes;—verdadero trayecto en que se iniciaron todos los cambios y todos los avances.

Con el mismo objeto, véase en el plano, que la tercera medida para fijar en el terreno la propiedad de Ponce, sigue los contornos del cauce; verificada la medida en 1872. Si se comparan los contornos con los del cauce de 1873, se nota que no hubo cambios *perceptibles*.

CONFIRMACIÓN DE LOS HECHOS ANTERIORES.

Las medidas para fijar la concesión de terreno otorgada á Ponce, confirman la serie atrás calculada.

El Informe que rindió á su Gobierno el Mayor Ernst, apoya las intermitencias, con los períodos de sequedad y los de crecientes variables; refiriéndose al movimiento irregular de las aguas.

El Comisionado americano hiza proposición, que fué aceptada por la Comisión mixta, de hacer constar en el Plano de referencias, el perímetro de terreno, según concesión otorgada en favor de Ponce; en virtud de lo cual, queda desde luego consignado aquel, entre las líneas azules, que se venen el citado plano.

La primera mensura de aquella propiedad, según los datos exhibidos, fué hecha en Mayo 25 de 1853, por W. S. Diffendorfer, agrimensor del Distrito de El Paso, quien obtuvo una superficie poco mayor de 599 acres.

La segunda mensura, ó sea su remedida, la efectuó Mr. Anson Mills, entonces agrimensor delegado del Distrito de El Paso y Presidio, en 8 de Febrero de 1859, quien obtuvo una cifra superficial de 673 acres; es decir, un aumento de 38 acres. No obstante que el Sr. Mills vé en tal aumento una acreción, ocurre la idea de un posible aprovechamiento, al correr las líneas sobre playas secas; si se recuerda que Diffendorfer midió en el mes en que las aguas tienen su nivel medio ascendente, y Mr. Mills lo hizo cuando las aguas, lejos del bordo, ocupan el fondo del cauce, favorecido acaso por la ausencia de paredones y riberas viejas—que es el carácter del terreno abandonado del lado izquierdo del Río, en sus avances sobre Juárez.

Por lo tanto, la zona de 21 metros de ancho, de acreción para Ponce, á que se refiere Mr. Mills, requiere una demostración mejor apoyada, para aceptarla como real y positiva sin dejar márgen á incertidumbres.

En cuanto á la línea que va al Río, de 1340 varas, acrecida en longitud, obteniéndose en la remedida 1423½ ó sea un aumento de 83½ varas, puede demostrar dos hechos; ó que por su extremo en la playa habia algún recodo en seco, ó acrecido muy localmente; ó que, si á la zona se le daban 83½ varas como aumento, la superficie de Ponce dejaba de tener 637 acres; y en consecuencia la cifra 38 de acrecimiento—tendría que alterarse considerablemente para conservar su relación. Sin embargo, de aquella suposición, posible como hecho, ó gratuita, si se demuestra la acreción, debo reconocer la rectitud y honorabilidad del agrimensor; y haciendo

justicia á la exactitud de sus operaciones, paso á otro órden de ideas, aceptando sus cifras como bien correctas.

Las 83½ varas ó sean 70 metros en que aumentó la línea antes citada, repartidos en 5 años dán 14 metros por año, ó bien un avance anual de 28 metros.

El tercer trazo, para fijar, mas tarde, la propiedad de Ponce, conteniendo dos caballerías ó sean poco menos de 216 acres, según los referidos datos, fué hecho en 18 de Noviembre de 1872 por José Wilkin Tays, agrimensor del Condado de El Paso, y demuestra que hasta el año de 1885 el Río había avanzado hácia el Sur, desde un punto frente á la Estación del Ferrocarril de Santa Fé, 170 metros, es decir, en 12 años, lo cual da 14.16 metros por año, ó bien un avance anual de 28.32 metros, cifra que concuerda con el resultado anterior.

Finalmente, como una prueba de la irregularidad de los repetidos movimientos y energias del Río, que destruye toda idea de uniformidad continuada, y de su avance lento y gradual que se pretende atribuirle, me permito poner aquí, á reserva de insertar más adelante el extracto del Mayor Ernst, la estimación que consigue al fin de su Informe acerca del Río; dice asi:

"La distancia máxima entre la orilla del cauce de 1855 y la del de 1885 es cerca de ⅝ de milla, y la total area acrecida en el lado izquierdo es de 490 acres, poco menos."

Pues bien, los ⅝ de milla son 1005.87 metros, que repartidos en 30 años dán 33.53 por año, ó sea un avance anual de 67.06 metros.

Se vé pues, que todas las cifras concuerdan con la serie, y con su promedio, (véase las paginas 14 y 15) demostrando así la irregularidad, tanto en intermitencias de acción violenta, como de abatimiento de energias.

Sirviendo de apoyo á estos tan repetidos hechos, que están en la conciencia de toda persona conocedora de la región, inserto aquí un extracto del informe del Mayor O. H. Ernst, del cuerpo de Ingenieros de los Estados Unidos, cuya imparcialidad en sus apreciaciones, y exactitud con que expone los carácteres del Río, no dejan absolutamente duda acerca de la variabilidad, etc., que, como yá lo he dicho, imposibilita toda idea de acción uniforme de las aguas, y por consigueinte toda acción lenta y gradual, en sus efectos de avance al Sur.

Extracto del Informe del Mayor O. H. Ernst, Cuerpo de Ingenieros de los E. U.

(Copia fiel del texto inglés.)

Leaving a rocky gorge just above El Paso, the Rio Grande issues into an alluvial plain some 5 or 6 miles in width, through which it flows in a bed of its own formation. The banks and bottom are of light earth and sand, easily moved by the currents. The river is a silt-bearing stream carrying at times an excessively large proportion of solid matter.

At the lowest stage the water ceases to flow and, except in detached pools, the bed becomes entirely dry. During the spring freshets the water sometimes rises to a height of from 9 to 10 feet above the lowest, and flows with a rapid current heavily charged with sediment. At such times it possesses great building, as well as destructive power. Between these two extremes there are at different seasons all degrees of volume and velocity. The size and character of the stream are ever varying, and its requirements as to form and dimensions of bed vary equally. The river's work of altering its bed to suit the necessities of the moment is never ending. The bed, as it happens to exist now, is the final result of all efforts of the stream, some of which have neutralized and some have aided each other; but the bed is not fixed. It is shifting from one position to another, altering its course, eroding one bank and building up the opposite one, forming islands and bars and then destroying them.

The result of the natural changes is most noticeable in a bend where the erosion of the concave shore is sometimes continuous for many years, as appears to have been the case at El Paso. The location of the river at this place, as it was found in 1855, is shown in black upon plate 1, which is an enlargement of a portion of sheet 29, United States-Mexican Boundary Survey, furnished me with your letter of instructions. Upon the same plate is shown in red ink the location of the stream as it was found by Mr. Garfias, the Mexican Engineer, in 1885. It will be observed that between these dates there has been a very considerable encroachment upon Mexican territory, with a corresponding advance of the American shore.

The maximum distance between the shore of 1855 and that of 1885 is about five-eighths of a mile, and the total area added to American territory is about 490 acres.

I have been unable to learn whether this movement has been continuous throughout the thirty years, or whether it has been intermittent.

Queda pues de manifiesto que el Mayor Ernst reconoce ingenuamente todos estos hechos:

Que durante el tiempo de las aguas ínfimas el agua cesa de correr, llegando á reducirse á charcos, y aún á veces á la desaparición absoluta.

Que, á las primeras lluvias de la primavera el nivel se levanta hasta 9 ó 10 piés sobre el de las aguas bajas, y que en aquel tiempo adquiere gran poder para destruir como para acrecer.

Que la capacidad y carácter de la corriente están sujetos á variaciónes incesantes, lo mismo que la forma y dimensiones del cauce.

Que no tiene fin el trabajo que opera en alternaciones de cauce para plegarse á las necesidades de cada momento de los tiempos.

Que el efecto de todo cambio se acentúa notablemente en las curvas, porque corroe y socava la márgen cóncava con mas energias, y en ese trabajo algunas veces persiste por varios años—y esto es, lo que según cree, aconteció en El Paso.

Que entre los cauces de 1855 y 1885 media la considerable distancia de ⅝ de milla—que representa la profundidad del avance á territorio mexicano, con un consiguiente acrecimiento para el americano, que aprecia en poco ménos de 490 acres.

Luego, se infiere, que, si nó corroe en tiempo de secas; ni tiene volúmen constante de aguas para obrar con uniformidad; si pues la capacidad y caráctar de la corriente están sujetos á variaciones incesantes, dado que hay períodos de completa sequedad, como los hay de crecientes, que obran con rapidez, el avance lento y gradual es un imposible.

He aquí una prueba más, que confirma el avance violento á períodos irregulares.

No hay corrosión lenta y gradual, porque el Río no tiene régimen fijo.

Copiaré del "Proyecto de obras de defensa en el Río Bravo, frente á la villa de Paso del Norte," del Ingeniero Ignacio Garfias, lo que sigue:

"Como es sabido, el régimen de un río es la relación que existe entre su sección trasversal, su pendiente longitudinal, la naturaleza de su lecho, y su caudal.

"Se dice que el régimen es fijo, cuando estas variaciónes son constantes, ó cambian insensiblemente con el trascurso de los tiempos.

"El régimen, por el contrario, es variable, cuando la relación expresada entre sus factores, se altera.

"Ahora bien, si las secciones trasversales son aquí tan variables, si el cauce varia con tanta facilidad, modificando sus pendientes al aumentar su desarrollo, el régimen es variable.

"Y tanto es así, cuanto su volúmen ó caudal está sujeto á las variantes que le imprimen las crecientes y los períodos de sequía, obligándole á diversas velocidades—y consiguientemente á secciones mojadas multiformes.

"Además de la observación directa, la ciencia viene en apoyo de aquellas variaciónes al examinar la clase de materias que se encuentran en el lecho. (Véase la tabla que sigue:)

"Materias que arrastra la corriente segun sus velocidades.

Velocidad por segundo.	Materias arrastradas.
½ de pié	Arcilla fina.
½ pié	Arena fina.
¾ de pié	Arena gruesa.
1 pié	Grasa fina.
2 piés	Grasa gruesa de 1 pulgada de diámetro.
3 piés	Piedras del tamaño de un huevo.

"En el lecho se encuentran todos estos materiales; lo cual prueba que, las materias menos pesadas se han depositado durante los estiages cuando la velocidad disminuye á su mínimum; y que los materiales gruesos han sido acarreados por las crecientes."

Esto comprueba científicamente que el Río tiene en efecto todos los caracteres de que antes se hace mención. Luego si su régimen nó es fijo, su trabajo corrosivo sugeto á las irregularidades de períodos de acción siempre diferentes, nó puede ser lento y gradual.

Probado yá suficientemente en principio, que el Río no ha podido hacer sus avances sobre territorio mexicano, de una manera lenta y gradual; sino al contrario, por demoliciones más ó menos violentas de la margen derecha, procediendo por períodos á intervalos desiguales, puesto que las crecientes no están sujetas á una periodicidad cíclica; voy ahora á demostrar; que en efecto, unas cuantas crecientes, han debido vastar para trasportar el cauce de donde estaba en 1852, á donde estuvo en 1889—última localización más avanzada al Sur.

De propria observación me consta que cuando llega una creciente capaz de remontar y persistir algún tiempo arriba del nivel medio, el efecto destructor es activo ó activísimo, si la creciente es máxima; durando en ese trabajo cuando menos 40 horas, las que aproximativamente, sin gran error, pueden distribuirse con relación al trabajo, de la manera siguiente:

De subida 9 horas, corroyendo ó socavando la capa de arena vecina al nivel medio, ocasionando así los hundimientos consiguientes del suelo ó terreno que en ella gravita.

Encima del nivel medio 14 horas, desmoronando con su empuje y á la vez remojando las capas de tierra vegetal, que por falta

de cohesión ceden y caen en forma de "tajadas" para ser arrastradas por la corriente.

De bajada 7 horas, en alturas vecinas del nivel medio, operando del mismo modo que en la subida, aunque con mayor energía, debido al remojo de las capas del terreno.

De retirada 10 horas, á la altura de la capa de arena, produciendo efectos análogos, pero con menos violencia. En esta face, la superficie del suelo se agrieta por la desecación; el subsuelo se halla demasiado remojado, y la capa de arena que le sirve de base se contrae por el escurrimiento de las aguas que la habían saturado. Los aproches del cantil continúan derrumbándose por capas más y más delgadas, cesando al fin con el abatimiento de la masa líquida.

Total, 40 horas, de acción rapida.

DEMOSTRACION TÉCNICA; ÚLTIMA PRUEBA.

Voy por fin á probar por medio del cálculo, que una creciente máxima, ó bien una grande ordinaria, es capáz de un avance de 60 metros en 40 horas.

El promedio de la sección mojada en el trayecto rectilíneo abajo de la presa, en el concepto de una creciente grande ordinaria es:

Ancho superior	73	metros.
Ancho en el fondo	25	metros.
Profundidad	1.80	metros.
Declive por metro =	0.00041	
Radio hidráulico $\frac{a}{p} = R =$	1.1867	
Sección mojada $a =$	88.20	
Perímetro mojado $p =$	74.32	

Sea n un coeficiente de rosamiento del líquido en el canal, que según las tablas de Ganguilet y Kutter es = 0.025; por consiguiente $\frac{1}{n} = 40.00$.

Sea $c = \sqrt{\frac{1}{C}}$ un coeficiente constante, independiente de la forma, dimensiones y rosamiento del canal; que ha sido determinado por muchas experiencias, pero que ha fijado ya Kutter por medio de la fórmula que lleva su nombre.

Con estos datos, calcularé cuando obtenga c, la velocidad de la corriente, que me es desconocida, por falta de propia observación

en tiempo de crecientes grandes ordinarias. La velocidad se obtiene por esta expresión:

$$v = \sqrt{\frac{1}{C}}\sqrt{RS}$$

siendo S la relación de pendiente ó declive = 0.00041, como dije antes.

El coeficiente $c = \frac{1}{C}$ lo dá la fórmula de Ganguilet y Kutter, que es la siguiente:

$$c = \frac{23 + \frac{0.00155}{S} + \frac{1}{n}}{1 + \frac{\left(23 + \frac{0.00155}{S}\right)n}{\sqrt{R}}}$$

Aplicando los valores, resulta

$$c = 41.33$$

y por consecuencia $v = 0.911657$ (velocidad media).

Ahora, véamos, cual es la cantidad de movimiento que la masa líquida desarrolla, con esa velocidad.

Sea M la masa del líquido

$$\text{entonces } Mv = \frac{Pvt}{g} \text{ ó bien}$$

$$F = \frac{Pvt}{g} \quad (1)$$

siendo P el peso del agua = 1.00
t = tiempo = 1 seg.
g = la gravedad = 9.40
F = la fuerza de empuje.

Aplicando los valores á la fórmula (1) se obtiene Presion ó Empuje = 513¼ toneladas en un minuto. Mas como no opera el empuje normalmente, porque obra en el primer recodo, donde el río tuerce al oriente, describiendo una curva; aquel valor debe multiplicarse por 0.68 ó sea lo correspondiente al choque bajo un ángulo de 45° con que aproximadamente hiere al paredón. Por consiguiente, el empuje se convierte en 349 toneladas por minuto.

Por falta de datos y tablas de coeficientes de las diversas tierras, y por ser este asunto demasiado complejo, no me es posible calcular el momento de inercia; pero para dar una idea de equilibrio, procedo así:

[illegible] metro cúbico de tierra vegetal seca, entremezclado con arcilla arenosa pesa 1600 kilos. Para resistir aquel empuje, es necesario un prisma cuya base tiene igual á la sección mojada del río y cuya profundidad tiene de 2.40 metros, de la misma tierra humedecida, exclusión de su tenacidad, que me es desconocida. Este prisma debe ser de 2115 metros cúbicos, para pesar las 3383 toneladas del empuje, y resistirle durante un minuto.

De allí se infiere que, salvo la modificación del resultado, si introdujera los coeficientes, el río puede destruir los paredones á razón de un valor cercano á 2.40 metros por minuto, en condiciones especiales mucho más ó mucho menos, según el sesgo de los bordos, las corrientes directas ó perturbadas y diversas circunstancias siempre complejas, en que toman parte los remojos y las filtraciones tan variables en las capas de arena del subsuelo.

Según la apreciación de muchos vecinos de ambas riberas, y la mía propia, no se peca por exceso, concediendo la cifra 1.50 metros de demolición de bordo, por hora, durante el auge de una creciente grande. Y aceptándola sin temor, como promedio bien prudente, resulta que el Río en 10 horas avanza, y puede realmente avanzar 60 metros.

Véase pues, que el cálculo viene en apoyo y confirmación de cuanto he dejado antes razonado.

Nada tuviera de extraño, en el concepto de los valores obtenidos, que el Río solamente hubiese necesitado de 8 crecientes grandes, para haberse trasladado de donde tuvo su cauce en 1852 á donde se encuentra en este año de 1896, porque ello es posible.

Con el cálculo, y desde este punto de vista, juzgados los hechos, *hallo el promedio anual antes computado*—una vez que, las intermitencias muy irregulares, *no permiten realmente aceptar aquel promedio*, sino como un preliminar para llegar á los hechos positivos—de comprobación inmediata.

CONSIDERACIONES FINALES.

Las obras de mejoramiento de la ciudad de El Paso, Tex., al emparejar las calles y arreglar los pavimentos, lo mismo que los propietarios rellenando hoquedades y arrasando protuberancias han borrado todo vestigio de cauces y bordos viejos.

A falta de huellas marcadas de anteriores movimientos del Río Bravo, hay que atenerse á la luz que arroja la configuración del actual suelo, mostrada por las curvas de nivel que resultaron de las operaciones ejecutadas durante estos ultimos días.

Véase el plano de referencias. Comparando entre sí las líneas de mayor y de menor pendiente se llega á un conocimiento exacto de la dirección de los declives, y del cauce forzado que el canal formó en los últimos años.

Es bien sabido que en el trayecto rectilíneo del Río, abajo de la antigua presa, hace éste un recodo para girar al oriente y describir en seguida un arco más ó menos grande, frente á Ciudad Juárez, presentando su concavidad al Norte.

Después del año de 1852 el recodo fué empujado por máximas crecientes, y obligó al Río á describir arcos de radio siempre mayor, á expensas del declive y de la porosidad de las capas arenosas inmediatas á la superficie—cubierta de tierra vegetal, las cuales, dicho sea de paso, se acercaban á flor de tierra tanto más, cuanto avanzaban en el descenso, contribuyendo así poderosamente á que los arcos se alejasen en su desarrollo.

Esta circunstancia especial, que imposibilita toda suposición de avance lento y gradual del cauce, facilitaba admirablemente paso abierto á las inundaciones al entrar las fuertes crecientes—factores de canales nuevos por avances del recodo. Porque se vé de un modo claro que el torrente impetuoso en su trayecto rectilíneo no pudo girar sin empujar el recodo, y sin imprimir en la nueva curva por desarrollarse su tendencia ineludible á la rectificación.

De aquí se infiere necesariamente, que cada nuevo arco tuvo que desprenderse del trayecto rectilíneo bajo un ángulo demasiado agudo, por la ley de los impulsos y de las rectificaciones de las corrientes, dejando atrás un espacio intermediario que el cauce no pudo ocupar, pero sí inundar, cubriéndolo de aguas relativamente mansas, aúnque con fuerza suficiente para arrastrar las arenas ligeras, á las partas mas lejanas de las extensiones inferiores—y depositar el sedimento con aluvión en el espacio más alto y cercano al vértice. Prueba incontestable de un salto verificado según este procedimiento, es el corte vertical del subsuelo, abierto sobre la línea roja A. B. (véase el plano de referencias) y la cuenca del cauce de 1852, exhibida por las curvas de nivel—la cual está localizada entre el cruzamiento de la calle 7a con la de South Campbell, y el patio de la Estación del Ferrocarril Texas y Pacifico. Esta cuenca no pudo quedar marcada tan perfectamente bien en el terreno, si el río hubiese avanzado por corrosión lenta y gradual, sin allanar la ondulacion de relieve de la margen derecha, y sin dejar atrás de su avance una superficie uniforme.

Apoyándome pues en este hecho incontrovertible, y considerando el conjunto de razones, argumentos y pruebas que atrás dejo acu-

muladas, y confirmadas á la vez por personas irrecusables; comprobando el cálculo la acción violenta del Río debo de llegar finalmente á las siguientes.

CONCLUSIONES.

1ª El Río Bravo del Norte al abandonar su lecho de 1852, avanzó hasta el que tuvo en 1895 y tiene en 1896, por rompimientos violentos y directos en el recodo sobre el trayecto rectilíneo; y por saltos, en forma de curvas descritas frente á Ciudad Juárez abandonando el antiguo canal, para entrar en el nuevo.

2º Los rompimientos violentos, y los saltos, se efectuaron á períodos intermitentes de intervalos desiguales.

3º El avance no ha podido verificarse de una manera lenta y gradual.

El Ingeniero Consultor,
EMILIANO CORELLA.

C. JUÁREZ, *Mayo 26 de 1896.*

[Acta.]

CIUDAD JUÁREZ, *Julio 10 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado mejicano á las 8 A. M.

El Comisionado de los Estados-Unidos manifestó, que el informe del Ingeniero Consultor mejicano, en 74 páginas manuscritas ofrece aparentemente nuevos argumentos que necesitan ser refutados por medio de testimonios; y, por creerlo de justicia para él, desea que estos hechos consten en las actas. Por su carácter esencialmente técnico apenas pudo ayer terminarse la traducción; pero que la ha leído con cuidado y desea, ahora, fijar los puntos sobre los cuales se propone obtener declaraciones en contrario, á menos que el Comisionado mejicano se preste á admitir lo que se propone probar.

Primero: En la página 22 de la traducción inglesa está equivocado el Ingeniero Consultor mejicano, ó por lo menos exagera mucho cuando dice:

"Las obras de mejoramiento de la ciudad de El Paso, Texas, al emparejar las calles y arreglar los pavimentos, lo mismo que los propietarios rellenando hoquedades y arrasando protuberancias han borrado todo vestigio de cauces y bordes viejos."

Es un hecho que hay muy pocas mejoras, si acaso existen algunas, á lo largo de la localización del río de 1852, y, salvo en los cruceros de las calles de El Paso y Santa Fé, no se ha hecho ninguna nivelación ni pavimentación. El Comisionado de los Estados-

Unidos pregunta al Comisionado mejicano si admite este hecho, ó, de no ser así, si permite la prueba en contrario.

Á lo que replicó el Comisionado mejicano que admitiría los hechos como los manifiesta el Comisionado de los Estados-Unidos, tanto más que su Ingeniero Consultor manifestaba que no se refería ni al cauce viejo ni á los bordes de 1852.

Segundo: Si lo que el ingeniero mejicano, en la página 23, intenta demostrar con su mapa de referencia, es que las curvas de nivel revelan de algun modo la huella de un cauce viejo del río abandonado, el Comisionado de los Estados-Unidos está dispuestó á probar que las diferencias allí indicadas á lo largo del canal, en la calle octava, entre las de Santa Fe y Ochoa,—como lo manifestó en acta de 30 de Mayo,—fueron causadas en Mayo de 1891 durante una gran creciente, porque los pontones jetties—mejicanos, reforzaban la corriente contra el dique de los Estados-Unidos—*levée*—abajo de la calle octava, rompiéndolo en una distancia de 75 yardas, llevándose gran parte del volúmen de la creciente por el canal de la calle octava, destruyendo los cuatro puentes del ferrocarril en las calles de Santa Fé, El Paso, Stanton y Kansas, y cavando durante algunas semanas las depresiones que allí se demuestran.

El Comisionado de los Estados-Unidos solicita que el Comisionado mejicano admita los hechos manifestados, ó le permita la prueba en contrario.

El Comisionado mejicano replicó que admitía los hechos manifestados por el Comisionado de los Estados-Unidos.

El Comisionado mejicano solicitó que se hiciera constar en esta acta que su ingeniero consultor asistió á la junta y aprobó las aclaraciones hechas á su informe. En lo que estuvo de acuerdo el Comisionado de los Estados-Unidos.

El Comisionado de los Estados-Unidos notificó, en seguida, al Comisionado mejicano que incluirá en sus argumentaciones, por lo que puedan valer para las personas que más tarde conozcan de este caso, los hechos siguientes que por ser de notoriedad pública no cree necesario probar.

Primero: Que durante 42 años,—es decir desde 1852 cuando se marcó la línea divisoria por Emory y Salazar hasta el 23 de Enero de 1894 cuando el peticionario en este caso, Pedro Y. García, presentó su queja,—ninguna reclamación se hizo oficialmente sobre parte alguna del terreno en disputa, ni por autoridades mejicanas ni por ciudadanos mejicanos; y que las autoridades de

los Estados-Unidos ejercían indisputable jurisdicción sobre los terrenos en la ribera izquierda del río hasta el canal más profundo enfrente de Juárez, y sin interrupción durante su movimiento hacia el Sur.

Segundo: Que ambos gobiernos, por disposición legislativa, dieron por el año de 1884 á la "El Paso Street Railway Company," compañía matriculada en los Estados-Unidos, y á la "Paso del Norte Street Car Company," domiciliada en Méjico, una concesión para construir un puente internacional sobre el Río Grande para unir ambas líneas de ribera á ribera, y que, por la misma fecha, igual concesión fué otorgada á la Compañía del Ferrocarril de El Paso y Río Grande A. T. y S. F. matriculada en los Estados-Unidos y á la Compañía del Ferrocarril Central Mexicano domiciliada en Méjico, para construir un puente internacional sobre el Río Grande, para unir esas vías de lado á lado de dicho río; y que, posteriormente, es decir por el año de 1888, igual concesión fué otorgada por los respectivos gobiernos para construir otro puente internacional sobre el Río Grande, para empalmar la Santa Fé Railway Company con la Compañía de tranvías de Juárez, domiciliada en Méjico, y que todos esos puentes fueron construidos poco después de la fecha de sus concesiones, y que las extremidades de todos esos puentes en la ribera derecha han permanecido siempre bajo la jurisdicción mejicana, y, las de la izquierda, bajo la de los Estados-Unidos.

Tercero: Que los Administradores de las Aduanas de cada nación han situado siempre desde 1852, á los guardas aduaneros á la orilla del río, conforme se movía; y que desde la construcción de los puentes de tranvías, cada gobierno ha mantenido una garita con un agente en cada extremidad de los puentes.

El Comisionado mejicano replicó que admitía simplemente como verdades de hecho los tres puntos á que hace referencia el Comisionado de los Estados-Unidos; pero que desde ahora advierte, por lo que pudiera valer, que ninguno de esos tres hechos aun comprobados perfectamente, empece el derecho que al Gobierno de Méjico asiste para reclamar la parte de territorio que le pertenece en virtud de la Convención de 1884, pacto internacional solemne cuya validez no puede destruirse por ninguno de los hechos que desea hacer constar el Comisionado de los Estados-Unidos.

El Comisionado de los Estados-Unidos manifestó, en seguida, que como el caso de "El Chamizal" No. 4, parecía ya estar enteramente terminado tocante á toda investigación de cualquier clase

ó naturaleza que fuera; y, como aparecía de las discusiones verbales que los Comisionados no podrían ponerse de acuerdo; y, como Méjico era la parte actora, tenía que requerir al Comisionado mejicano para que presentara en términos claros y precisos las razones que tenía para disentir de su opinión y que él las contestaría de igual manera, con el objeto de que aquellas personas que más tarde tuvieran que conocer de esta larga y hasta ahora infructuosa investigación, pudieran entenderla debidamente y aprovechar con toda amplitud sus labores y decisiones respectivas.

La Comisión mixta se aplazó á las 11.30 A. M., para reunirse mañana 11 del corriente en la oficina del Comisionado de los Estados-Unidos á las 11 A. M.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Julio 13 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos á las 11 A. M., por no haberse verificado la junta citada para el día 11.

En seguida los Comisionados entraron á la discusión del caso No. 4 de "El Chamizal" y, por tratarse de una reclamación presentada por parte de Méjico, hizo primero uso de la palabra el Comisionado mejicano, para demostrar que el cambio del Río Bravo efectuado desde el año de 1852 hasta la fecha, no debería—conforme al espíritu y á la letra del tratado de 1884—alterar la primitiva línea divisoria trazada por los Señores Salazar y Emory, pues, en su concepto, no cabía ni la menor duda de que dicho cambio, ó mejor dicho cambios, son debidos á la fuerza de la corriente de las aguas, demasiado impetuosas en este río en la época de crecientes, y no á la corrosión *lenta y gradual* como expresamente lo exige el pacto internacional solemne que existe entre Méjico y los Estados-Unidos. El Comisionado americano no estando conforme con la opinión sostenida por el Comisionado mejicano, adujo argumentos para sostener lo contrario y, de ahí, se originó una larga discusión que se prolongó por más de cinco horas y que, por más que ambos Comisionados trataron con la mayor buena fe de orillarla á un avenimiento equitativo y decoroso para los intereses de las dos naciones que representan, no fué posible, desgraciadamente, lograrlo. En esta virtud, ambos Comisionados resolvieron rendir sendos informes á sus respectivos Gobiernos, no sin hacer antes constar, compendiosamente en esta

acta los argumentos que uno y otro adujeron en apoyo de sus opiniones encontradas. Los argumentos capitales esgrimidos por el Comisionado mejicano pueden resumirse en los siguientes puntos.

Primero: Que la condición *sine qua non* que el Tratado exige en su artículo I para que un cambio del Río Bravo no altere la línea divisoria es que "este cambio se debido á corrosión *lenta y gradual;* y segundo que todo otro cambio—proposición universal—ocasionado por la fuerza de la corriente no produciría alteración alguna de la línea divisoria tal como fué fijada por los reconocimientos de la Comisión Internacional de Límites de 1852. Relacionados estos dos artículos, toda la cuestión internacional, en el caso de que se trata, se puede encerrar dentro del siguiente silogismo:

Mayor: Todo cambio que no sea *lento y gradual* no altera la línea divisoria.

Menor: Es así que el cambio del río en el caso denominado "El Chamizal," no tan sólo no ha sido lento y gradual sino violento y en períodos de tiempo de intermitencias desiguales.

Consecuencia: Luego el cambio del río en terrenos de "El Chamizal" no altera la línea divisoria marcada en 1852.

La proposición mayor de este silogismo es evidente por sí misma sin necesidad de otra prueba, y, si el Comisionado mejicano logra demostrar la verdad de la menor, no podrá el Comisionado americano menos que rendirse á la fuerza lógica de la consecuencia.

Comprobación de la menor: Para demostrar la verdad de la proposición menor, conviene ante todo ponerse de acuerdo en lo que debe entenderse por *corrosion lenta y gradual* y, desde luego, acepta como buenas las definiciones que, en inglés da Webster á estas palabras.

"*Corrosion:* The action or effect of corrosive agents, or the process of corrosive change; as the rusting of iron is a variety of corrosion."

"Slow: Moving a short space in a relatively long time; not swift; not quick in motion; not rapid; moderate; deliberate; as a slow stream; a slow motion." Y en la segunda acepción de *slow* se hallan estas palabras que convienen y se ajustan al caso de que se trata y que deben siempre tenerse presentes: "not happening in a short time; gradual; late."

"Gradual: Proceeding by steps or degrees; advancing step by step, as in ascent or descent, or from one state to another; regularly progressive; slow; *as a gradual increase of knowledge;* gradual; late."

Definido ya lo que debe entenderse por corrosión lenta y gradual, el Comisionado mejicano afirmó que por la declaración de todos los testigos examinados; por el carácter inconstante y voltario del Río Bravo, en la región en que se halla el terreno disputado; y por la conformación topográfica que aun conserva este mismo terreno; el cambio de lecho que tuvo el Bravo en 1852, con el que actualmente ocupa en un canal distinto de aquél, no es, ni ha podido ser lento y gradual, como pasó á demostrarlo en seguida.

Prueba testimonial: Las declaraciones de todos los testigos son *unánimes* sobre estos puntos: que el cambio ó cambios del río se han verificado siempre en la época de las grandes crecientes y por virtud de la fuerza de la corriente; que tales cambios ni si quiera se efectúan, año por año, de una manera gradual, sino caprichosamente y en períodos de tiempo indeterminado; por ejemplo, el río no cambió, ó cambió imperceptiblemente, en un período de doce años; ó sea desde 1852 hasta 1864; y desde este año al de 1868, época en que hubo grandes y terribles inundaciones se verificó el cambio mayor que haya tenido el lecho del río. He aquí como se producen á este respecto todos los testigos:

El primero de los examinados ante la Comisión mixta, Jesús Serna declaró que: "en 1854 hubo una *gran inundación*, pero que sólo en 1864 hubo un cambio notable del río." "Que el *cambio fué violento*, destruyendo árboles, cosechas y casas." Acta del 14 de Abril.

El segundo, Don Inocente Ochoa, que por su riqueza y honorabilidad es una de las personas de mayor suposición en Ciudad Juárez dijo: "de 1858 á 1860 hubo algunos cambios pequeños." "El más importante tuvo lugar en 1864 cuando se *destruyó la presa*." "El *cambio principal* fué en 1864, pero desde entonces los cambios han sido pequeños." Acta del 14 de Abril. "El mayor cambio ocurrido *fué violento* como ya lo manifesté y se verificó en 1864." Acta del 14 de Mayo.

El tercero, Don Espiridión Provencio, propietario de los más conspicuos de Ciudad Juárez, y que ha desempeñado puestos públicos de importancia afirmó: "El primer cambio *notable* del río se verificó por el año de 1864." "No puedo valorizar las expresiones de lento ó violento; pero á veces hasta *cincuenta yardas* se arrancaban de ciertos puntos durante un día." Acta del 14 de Abril. "Cuando el río hizo su cambio alarmante, *se llevaba pedazos de tierra de una y dos yardas* constantemente, á intervalos de unos cuantos minutos. Cuando ocurrían estos cambios, la gente estaba en pié desde la ribera viendo caer los pedazos, y repentina-

mente alguna persona gritaba ¡cuidado! ¡que va á caer otro pedazo! y la gente tenía que saltar atrás para evitar caer al río." "Esta obra de destrucción *se efectuaba solamente durante las grandes crecientes.*" " En 1864 debido á una desviación del río en la presa referida y corriendo enteramente hacia el lado mejicano, echó la corriente al lado americano impetuosamente contra una ribera de roca que ahora existe un poco abajo de dicha presa, y, al retirarse después de ese choque, la corriente se precipitó de regreso contra " El Chamizal " hoy Mejía lo cual fué causa de que fueran arrastradas por las aguas las tierras y las casas y aun se dió el caso de que muchas personas no hubieran podido salvar sus objetos particulares." (Acta del 20 de Abril.)

El cuarto, Don José María Flores muy conocido y bien reputado comerciante de los más antiguos residentes en El Paso y Ciudad Juárez, y testigo, además, presentado por el Comisionado americano, aseveró: " Que, entre 1864 y 1868 la corriente vino con *tanta violencia* que destruyó casas y labores." " Si el río cambió desde 1852 á 1864, no fué mucho, sino imperceptiblemente." "Había años en que esos cambios no tenían efecto. No venía agua suficiente para causar un cambio, pero en algunos años el cambio del río era considerable, *según la cantidad de agua que traía.*" (Acta de Abril 16.)

El quinto testigo, presentado también por el Comisionado americano, es Mr. Samuel Schutz, comerciante que ha sido de importancia y uno de los más antiguos moradores de El Paso, Texas. De lo declarado por él resulta: " Que el río cambió frente á esta ciudad (El Paso) un poco; sobre todo, un poco más abajo de este lugar, por el año de 1864. Entonces hubo una gran creciente que hizo mayores daños del lado mejicano y minó los bordes más de lo que lo había hecho en años anteriores." " Las corrientes que acaecieron entre 1864 y 1868 fueron de *tal manera impetuosas* que destruyeron casas y campos de labor." (Acta de Abril 16.)

El Señor José Magoffin, banquero respetabilísimo de El Paso, Texas, en donde, con cortas ausencias, ha residido desde el año de 1844, es el sexto testigo. Éste fué presentado por el Comisionado americano, y, bajo juramento, aseguró: " Que el río procuraba todo el tiempo meterse á Méjico; su curso natural se inclina hacia ese lado. Este *daño* que causaba el río *destrozando* los bordes mejicanos, desde la casa de Ketelsen y Degetau hasta en frente de la fundición de abajo, daba por resultado que el río diera vuelta y se viniera directamente hacia el viejo Fuerte Bliss, que era propiedad de mi padre. Nosotros teníamos allí 20 carros que se ocupa-

ban, de dos á tres meses seguidos, en procurar *impedir que el río se llevara el Fuerte.* Los bordes de la ribera mejicana hacia el Sur eran generalmente de 20 piés de alto, aquí en " El Chamizal." Todos ó casi todos han desaparecido á la fecha, y todo lo que ha aumentado el terreno de los Estados-Unidos se debe al *derrumbamiento de esos bordes* al caer dentro del río. Este siguió en su obra de destrucción, como he dicho antes, hasta el año de 1862 que fué cuando me fuí á prestar mis servicios al ejército del Sur." (Acta de 16 de Abril.)

El séptimo y último testigo, el Señor Doctor Don Mariano Samaniego, persona honorabilísima y que ha ocupado altos puestos públicos en la República Mejicana, tales como Diputado al Congreso de la Unión y Gobernador del Estado de Chihuahua, declaró: "He podido notar que esos cambios *ocurren generalmente durante las crecientes.*" "En el año de 1862 hubo una gran creciente. El río se extendía hasta el punto que se llamaba Franklin, hoy El Paso. No se podían distinguir los objetos de un lado del río al otro. Por supuesto que durante las inundaciones causaba daño, pero más cuando las agus se retiraban; la corriente siempre se inclinaba al lado mejicano. En 1864 *la corriente fué tan fuerte* que destruyó los jetties construidos en la ribera mejicana del río, pasando detrás de ellos, lo que impidió que regresara á su antiguo cauce." "Los cambios eran tales *que á veces durante la noche, el río se llevaba de 50 á 100 yardas. Hubo casos que gente que vivía en casas distantes 50 yardas de la orilla del río, de la noche á la mañana tenía que huir del lugar por motivo de los avances del río, y, en muchas ocasiones, no tenía tiempo de* [*cortar*] *sus trigos ó cosechas.* Se llevaba arboledas sin dar tiempo á la gente á cortar los árboles." "No hay nunca cambios durante el invierno." (Acta de 16 de Mayo.)

CARACTER DEL RÍO.

Demostrar que el carácter del Río Bravo es,—sobre todo en la región del terreno disputado,—inconstante y voltario, es casi inútil, por ser un hecho patente para todo el mundo. Sin embargo, conviene aquí asentar la autorizada opinión de dos ingenieros americanos que han hecho un estudio especial del Río Bravo, es á saber, la del Señor Mayor O. H. Ernst y la del propio Señor Coronel Anson Mills. Dice el Primero: "En tiempo de secas el agua deja de correr y, excepto en charcos separados, el lecho queda *enteramente seco.* Durante las crecientes de la primavera

el agua sube á veces á una altura de 9 á 10 piés sobre el nivel más bajo, y corre con rapidez y muy cargado de sedimento. En esas épocas posee así una gran poder *reparador como destructor*. Entre esos dos extremos y en distintas ocasiones se observa toda una gradación de volúmen y velocidad. El tamaño y carácter del río varían constantemente, y sus exigencias, en cuanto á la forma y tamaño del lecho, son igualmente variables." "Está mudando de una posición á otra, alterando su curso, corroyendo un borde y reconstruyendo el opuesto, formando islas y playas, y luego destruyéndolas." (Acta de Mayo 7.) Asienta el segundo: "que si bien no podría asegurar que nunca había cambiado el río en el invierno, lo cierto es que jamás ha sabido ú oido decir que se efectuaran cambios durante esa estación, por la razón que las crecientes ocurren muy raras veces—si acaso las hay—durante los dos meses de invierno." (Acta de 18 de Mayo.) Con lo cual queda demostrado que los cambios del río jamás ocurren ni pueden ocurrir en invierno que es cuando el río está, "con excepción de charcos separados, *enteramente seco*."

CONFORMACIÓN TOPOGRÁFICA DEL TERRENO DISPUTADO.

Por el plano levantado por el Ingeniero mejicano Señor Zayas, y por el informe técnico del Señor Teniente Coronel Corella Ingeniero Consultor de la Comisión Internacional de Límites, en lo que á ese mapa se refiere, aparece que el terreno disputado, (que es el comprendido entre el lecho del Río Bravo tal como corría por el año de 1852 y el que actualmente hoy ocupa) lejos de haber sido nivelado de una manera uniforme por la acción mansa y corrosiva de las aguas, como necesariamente hubiera acaecido si el cambio del río hubiera sido *lento y gradual*, presenta una diferencia de nivel entre el terreno Norte y el extremo Sur, y estando éste por inexplicable modo si se admitiera la corrosión lenta y gradual á mayor altura que el del Norte.

Ahora bien, resumiendo todo lo anterior se comprende que sólo torturando el sentido gramatical de las palabras y quebrantando los preceptos más rudimentales de la dialéctica, puede decirse, después de haber oído la opinión unánime de los testigos, que un río que "destruye presas"; "*que arranca pedazos de terreno de hasta más de cincuenta yardas en unos cuantos minutos*"; "*que corre con tal violencia que destruye casas y labores*"; "*que amenaza llevarse al Fuerte Bliss*"; "*que ocasiona grandes derrumbamientos*"; "*que de la noche á la mañana arrasa con casas y todo de manera que*

no da tiempo de salvar á los moradores ni sus objetos particulares"; "que solamente es impetuoso, terrible y devastador en la época de las crecientes," y *"que por último, no solamente depone sus brios sino que se seca y muere durante el invierno y parte de la primavera, ó sea durante cerca de medio año,"* que este río, en suma, que es torrencial efectúa sus cambios por corrosión *lenta y gradual.* ¿Puede llamarse efecto corrosivo semejante al que el orín poco á poco ejerce sobre el hierro como una gangrena hasta convertirlo lenta é insensiblemente en polvo (*as the rusting of iron*) (*as a canker*) al tremendo poder destructor de un río que, por antonomasia, se denomina el Bravo? ¿Cómo puede afirmarse que es *lenta* la destrucción de 50 y 100 yardas de terreno en pocos minutos, ni cómo mantener que se efectúa en un espacio de tiempo relativamente largo (*moving a short space in a relatively long time*)? ¿Quién, que no esté obsecado, podrá ya sostener que un río tan inconstante como El Bravo, efectúa su obra de destrucción *paso á paso y grado por grado* de la manera como en la mente humana va creciendo el caudal de conocimientos (*proceeding by steps or degrees; regularly; progressive; slow as a gradual increase of knowledge*)? ¿Y lo absurdo no tocaría los linderos de lo ridículo, si se pretendiese asentar que es regularmente progresiva (*regularly progressive*) la acción destructora de un río que tarda más de doce años en cambiar de lecho, que lo muda con violencia aterradora en cuatro ó cinco, y que está siempre seco la mitad del año?

¿Á qué, pues, insistir sobre este punto? Lo dicho basta y sobra para demostrar que el cambio del lecho del río Bravo del Norte, del lugar que ocupaba en 1852 al que actualmente tiene, no es debido á la corrosión lenta y gradual de que habla el artículo I del Tratado de 1884, con lo cual queda demostrada la verdad inconcusa que encierra la proposición menor del silogismo formulado al principio, y, cuya consecuencia, por lo tanto, es tan legítima que no podrá objetarla el Comisionado de los Estados-Unidos. Toda la cuestión debatida en el caso de "El Chamizal" puede encerrarse dentro de la mallas apretadas de este silogismo, que conviene reproducir á manera de conclusión:

Mayor: Todo cambio que no sea lento y gradual no altera la línea divisoria (Art. 1 de la Convención del 12 de Noviembre de 1884;)

Menor: Es así que el cambio del río, en el caso denominado "El Chamizal" *no tan sólo no ha sido lento y gradual,* sino violento y en períodos de tiempo de intermitencias desiguales (que es lo que ya quedó plenamente demostrado;)

Consecuencia: Luego el cambio del río en los terrenos de "El Chamizal" no altera la línea divisoria marcada por la Comisión Internacional de Límites en 1852. (Art. 2 de la Convención de 1884.)

Existen otros muchos argumentos basados tanto en el Derecho Romano, fuente perenne é inmarcesible de justicia destributiva, como en el Derecho de Gentes que rige y gobierna las relaciones internacionales entre los pueblos cultos. Pero como tales argumentos tan sólo serían valederos como ilustración en el asunto internacional de que se trata, bien pueden, por ahora, suprimirse en gracia de la brevedad y concisión con que deben redactarse las actas.

Sin embargo para concretar bien los términos dentro de los que debe encerrarse esta discusión, conviene aquí citar algunas definiciones y preceptos legales aceptados por la propia jurisprudencia de los Estados Unidos:

Accretion, en su acepción vulgar, significa en inglés según Webster: "The act of increasing by natural growth; esp. the increase of organic bodies by the internal accession of parts, organic growth. (Law.) The adhering of property of something else, by which the owner of the one thing becomes possessed of a right to another; generally gain of land by the washing up of sand or soil from the sea or river, or by a *gradual* recession of the water from the usual water-mark.

Avulsion, en su significación vulgar es: "A tearing *asunder;* a *forcible* separation." (Law.) "The sudden removal of lands or soil from the state of one man to that of another by an inundation or a current, or by a sudden change in the course of a river by which a part of the state of one man is cut off and joined to the state of another. The property in the part thus separated, or cut off *continues in the original owner.*" Webster.

He aquí algunas doctrinas legales reconocidas y citadas por la Suprema Corte de los Estados-Unidos en el caso de "The State of Nebraska, complainant, vs. The State of Iowa." Caso por cierto muy distinto del que ahora se disputa entre Méjico y los Estados-Unidos y en el que si la Suprema Corte de esta última nación declaro que "notwithstanding the rapidity of the changes in the course of the channel, and the washing from the one side and on to the other, the law of *accretion* controls on the Missouri River, as elsewhere; and that not only in respect to the rights of individual land owners, but also in respect to the boundary lines between

States," fué por que los carácteres de este río son muy distintos de los del Bravo, y sobre este punto el Comisionado mejicano llama muy especialmente la atención del Comisionado de los Estados-Unidos. Desde luego, y esto es muy importante, el Missouri no queda *enteramente seco* cerca de medio año sino por lo contrario es un río de primera clase y navegable hasta por vapores de mucho calado (is a river of the first class, navigable by steamers of heavy tonnage); el Missouri no solamente no se seca como el Bravo que es un río *puramente torrencial* y en los que el procedimiento gradual y lento de la acreciones es imposible, sino que su corriente variable según las estaciones del año, *constantemente* está corroyendo sus riberas. (It readily and rapidly yields to the force of a current and the banks formed of it afford a very slight resistance to the changes that rapidly flowing river is *constantly* making. The current of the Missouri River is *very rapid*, varying at different places and with the time of year and the stage of the water from five to ten miles an hour";) excepto en pocos casos, la Suprema Corte de los Estados-Unidos, reconoce que el Missouri por lo que se refiere á la acreción no se distingue de los demás ríos, más que en la velocidad de su corriente; pero, por lo demás la acreción se verifica *siempre*—notese bien *siempre*—por *imperceptibles* depósitos de particulas de tierra que están en flotación; cosa que no acontece en el Bravo que no *siempre* lleva agua y cuyos cambios y estragos ni siquiera ocurren *siempre* ni todos los años. (The only thing which distinguishes this river from other streams, in the matter of the current; and this in itself, in the very nature of things, works no change in the principle underlying the rule of law in respect thereto. The *accretion*, whatever may be the fact in respect to the diminution, is en el Missouri—*always* gradual and by the imperceptible deposit of floating particles of earth. There is, except in such cases of avulsion as may be noticed hereafter, in all matter of increase of bank, always a mere gradual and *imperceptible* process.) ¿Que es lo que deba entenderse por imperceptible nos da la norma esta cita: "The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, that could not perceive it *while the process* was going on;" lo que evidentemente no ha acontecido en los cambios del Bravo en "El Chamizal" pues el terreno á la vista de sus moradores ha desaparecido con violencia aterradora bajo sus propios piés, y, de la noche á la mañana, han comprobado que desaparecían por el ímpetu de las aguas sus casas y labores.

Establecida ya la completa diferencia de carácteres entre el río Missouri en la región disputada por el Estado de Nebraska contra el Estado de Iowa, y el Río Bravo en el terreno de "El Chamizal" reclamado por Méjico á los Estados-Unidos, conviene citar aquí los preceptos del Derecho de Gentes que, universalmente reconocidos por todos los pueblos civilizados tienen en el presente caso un valor incontestable por haber servido de fundamento á un tribunal respetabilísimo é integérrimo como es la Suprema Corte de los Estados-Unidos de América cuyas altas y sapientísimas resoluciones pueden servir de jurisprudencia universal, y ante las que no podrá menos que inclinarse respetuosamente el Comisionado americano.

SUPREME COURT OF THE UNITED STATES.

No. 4, ORIGINAL.—OCTOBER TERM, 1891.

THE STATE OF NEBRASKA, *Complainant*, vs. THE STATE OF IOWA. } On bill and cross bill. In equity.

(February 29, 1892.)

Mr. Justice Brewer delivered the opinion of the Court.

"It is settled law, that when grants of land border on running water, and the banks are changed by that gradual process known as accretion, the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possession may vary." "But if the change is violent and visible and arises from a known cause, such as a freshet, or cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two states. (2 Blackstone's Com. 262; Angell on Water Courses, sec. 60; Trustees of Hopkins Academy v. Dickinson, 9 Cush. (Mass.) 544; Buttenuth v. St. L. Bridge Co., 123 Ill. 535; Hagan v. Campbell, 8 Port. (Ala.) 9; Mury v. Sermon, 1 Hawks (N. C.) 56.)

Ahora bien, que el canal que hoy ocupa el río es distinto del que tenía en 1852 y tal cambio fué debido á la violencia y á una causa conocida tal como la *salida de madre* (freshet) verificada de 1864 á 1868, es un hecho perfectamente comprobado por la declaración *unánime* de los testigos.

"These propositions, which are universally recognized as correct where the boundaries of private property touch on streams, are in like manner recognized where the boundaries between States or nations are by prescription or treaty, found in running water. Accretion no matter to which side it adds ground, leaves the

boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel. In volume 8, Opinions of Attorneys-General, 175, 177, this matter received exhaustive consideration.

"For in truth, just as a stone pillar constitutes a boundary, not because it is a stone, but because of the place in which it stands, so a river is made the limit of nations, not because it is running water bearing a certain geographical name, but because it is water flowing in a given channel, and within given banks, which are the real international boundary." "Such is the received rule of the law of nations on this point as laid down by all writers of authority. See ex. gr. Puffend. Jus. Nat. lib. iv, cap. 7, s. ii; Gundling, Jus. Nat. p. 248; Wolff, Jus. Gentium, s. 106–109; Vattel, Droit des Gens, liv. i, chap. 22, s. 268, 270; Stypmanni, Jus. Marit. cap. v. n. 476–552; Rayneval, Droit de la Nature, tom. i, p. 307; Merlin Répertoire, ss. voc. alluv."

Por donde se deduce que cada año cuando el lecho del Río Bravo se seca, no por eso ha podido cambiar la línea limítrofe que pasaba por el centro del canal más profundo que se determinó por la Comisión Internacional de Límites en 1852. Y, en apoyo de esta deducción, viene esta otra cita:

"Almeda refers to the same point, briefly, but in decisive terms. He says: 'As the river belongs to the two nations, so, also, the river-bed, if by chance it becomes dry, is divided between them as proprietors. When the river changes its course, throwing itself on one of two conterminous states, it then comes to belong to the state through whose territory it runs, all community of right in it so far ceasing.' (Derecho Público, tom. i, p. 199.)"

Por último el Señor Cushing, cuyas son las anteriores doctrinas aceptadas por la Suprema Corte de Justicia de los Estados-Unidos añade á las autoridades citadas las siguientes que constituyen la base en que descansan los artículos 1 y 2 de la Convención celebrada entre Méjico y los Estados-Unidos:

"Don Andrés Bello y Don José María de Pando both enunciate the doctrine in exactly the same words, namely:

" 'When a river or lake divides two territories, whether it belongs in common to the conterminous riparian states, or they possess it by halves, or one of them occupies it exclusively, the rights, which either has in the lake or river, do not undergo any change by reason of alluvion. The lands insensibly invaded by the water are lost by one of the riparian states, and those which the water abandons on the opposite bank, increase the domain of the other state. But if, by any natural accident, the water, which separated the two states, enters of a sudden into the territory of the other, it will thenceforth belong to the state whose soil it occupies, and the land, including the abandoned river

channel or bed, will incur no change of master." (Bello Derecho Internacional, p. 38; Pando, Derecho Internacional, p. 99.)

Y termina con estas palabras: "Such, beyond all possible controversy, is the public law of modern Europe and America, and such, also, is the municipal law both of the Mexican Republic and the United States."

El Señor Coronel Mills, Comisionado de los Estados-Unidos, cuyos actos todos en su larga y honorabilísima carrera pública y privada, resplandecen por su acrisolada honradez y proverbial buena fe, sin duda alguna que, en ésta como en otras ocasiones, no se apartará un ápice del culto ferventísimo que siempre ha tributado á la verdad.

Hace ya más de un año que el mismo Señor Mills, asentaba por escrito lo siguiente: "La primera, desde El Paso hasta Presidio del Norte, en la que por virtud de la grande inclinación de la corriente y la firme consistencia de la tierra, los cambios del canal del río son debidos á *verdaderas avulsiones* y están comprendidos en los descritos por el Attorney General Cushing, en su dictamen de 11 de Noviembre de 1856; es á saber, entre aquellos que "*alejandose del lecho primitivo del río, forman por sí mismos un nuevo canal en otra dirección*," dejando islas cuya longitud, paralela á la orilla del río—es muchísimo mayor que su latitud; aislando tierras cultivadas, con habitantes á veces y originando que la nación cuyo territorio se corta de tal modo, debe de considerarse más bien perjudicada que beneficiada por conservar el límite natural del río."

Las pruebas testimoniales y documentos recogidos nuevamente, vienen á comprobar este opinión del Comisionado de los Estados-Unidos de que "los cambios de canal del río, en la región comprendida entre El Paso hasta Presidio del Norte son debidos á *verdaderas avulsiones*" y, por lo mismo no tendrá embarazo alguno en rendirse á la evidencia y declarar lealmente que es de justicia reconocer el derecho con que el Gobierno de Méjico, reclama que la línea divisoria se restablezca, en el caso de "El Chamizal," en el centro del canal más profundo del lugar que ocupaba el río el año de 1852, según consta en los mapas firmados por los Señores Emory y Salazar Ylarregui.

La Comisión mixta quedó aplazada durante el tiempo necesario para que el Comisionado de los Estados-Unidos preparase la respuesta que tenía que dar á los argumentos presentados por el Comisionado mejicano.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

[Acta.]

EL PASO, TEXAS, *Julio 17 de 1896.*

La Comisión mixta se reunió en la oficina del Comisionado de los Estados-Unidos á las 10 A. M., el cual manifestó que había leído las argumentaciones del Comisionado mejicano y que presentaba la siguiente contestación:

Este caso fué presentado á la Comisión mixta en 28 de Septiembre de 1894 por Méjico con motivo de una petición presentada por Pedro Y. García, con fecha 23 de Enero de 1894, y en la que declaraba que había perdido sus terrenos "en el año de 1873, año en que á consecuencia de un cambio brusco y repentino de la corriente del mencionado Río Bravo, quedó de hecho aquel terreno al otro lado del río." (Véase la página 1 del expediente); pero no se ha presentado testimonio alguno para probar que él ú otra persona hayan perdido algunos terrenos en el año y de la manera mencionada.

El mapa adjunto designado como "Hoja preliminar No. 1" indica los terrenos en disputa (cosa de 600 acres) la localización del Río Grande en 1852, la línea divisoria tal cual fué fijada en esa fecha por la topografía del Comisionado mejicano Salazar y la localización del río actual, conforme á los levantamientos de esta Comisión así como todos los objetos notables en las inmediaciones para evitar cualquiera confusión en quien llegare á examinarlo. Su escala es de $\frac{1}{2000}$.

El mapa marcado "Hoja definitiva No. 2" muestra la misma localización del río y terrenos más las dos ciudades de El Paso, Texas, y Juárez con todos los pormenores que se juzgaron de utilidad para el examen del caso. Escala $\frac{1}{2000}$.

Para la mejor inteligencia de cuál pueda ser la jurisdicción de la Comisión mixta y á que clase de autoridad legal debe sujetarse, conviene presentar estos puntos en orden cronológico.

La celebre opinión del abogado general Cushing sobre "Límites arcifinios" vol. VIII, pag. 175–80 sobre la aplicación de la ley internacional aunque clara y explícita, en lo que se refiere á los ríos del Este y á las costas bañadas por las aguas de este continente lo mismo que á las de Roma que le dió su origen y á pesar de que se presentaron idénticas dificultades en el Río Grande, no tuvo aplicación práctica, en los veinte y ocho años que se siguieron á su exposición sino hasta la Convención de 1884, que sentó leyes especiales "para resolver esas cuestiones" (Véase el preámbulo de este Tratado) entre ambas naciones, y es de presumirse facilmente que

el carácter del río y los intereses de ambos pueblos hicieron deseable á la par que necesario, que dichas cuestiones se sacaran del dominio de la ley internacional y se consideraran y determinaran por reglas más sencillas, mejor definidas, más facilmente comprensibles y de más facil interpretación y explicación con sólo los cambios en dos clases distintas y determinadas.

Sea la primera: "por causas naturales como la corrosión lenta y gradual y el depósito de aluvión y no por el abandono del canal existente y la apertura de uno nuevo" (Véase art. 1 del Tratado) caso en que la línea divisoria permanece y continúa en el canal y corriente más profundos en todos sus movimientos de avance y retroceso.

Sea la segunda: "ya sea abriendo un nuevo canal, ó donde haya más de uno haciendo más profundo otro canal que no sea el que se marcó como parte de la línea divisoria al tiempo del reconocimiento hecho conforme á dicho tratado" en este caso ó más bien dicho, en uno ú otro caso de esta clase, el cambio de la corriente y canal" no producirá alteración alguna en la línea divisoria tal como fué fijada por los reconocimientos de la Comisión Internacional de Límites en 1852; pero la línea fijada entonces, seguirá siendo el centro del canal original aun cuando éste llegare á secarse del todo, ó á obstruirse por el aluvión." (Véase el artículo II del Tratado.)

Hay más el preámbulo del tratado de 1889 que creó la Comisión mixta expresa allí su objeto: "deseando facilitar la ejecución de los principios contenidos en el Tratado de 12 de Noviembre de 1884" y más lejos las atribuciones de la Comisión mixta quedan descritas así: "la cual tendrá obligación, al recibir ese aviso, de trasladarse al lugar en que se efectuó el cambio ó se originó la cuestión; examinará personalmente el cambio indicado lo comparará con el cauce que seguía el río antes de que este cambio tuviera lugar, según aparezca de los planos respectivos y decidirá si se ha verificado por avulsion ó corrosión para los efectos de los artículos I y II de la Convención de 12 de Noviembre de 1884."

Todavía más, por convenio de los Comisionados celebrado en acta (véase pag. 7) se dijo que "toda la cuestión se reduce á saber si el río cambió su curso por corrosión gradual de la ribera mejicana y depósitos de aluvión en la ribera de los Estados-Unidos, como lo describe el Artículo I del Tratado de 1884, ó si fué por avulsión repentina, abriendo nuevo canal ó haciendo otro más profundo, que el que servía para demarcar la línea divisoria" y por todo lo

anterior, le parece claro al Comisionado de los Estados-Unidos que la jurisdicción única y exclusiva la Comisión mixta la tiene por virtud de las facultades que le otorgan los mencionados tratados de 1884 y 1889.

En cuanto á la definición de una palabra muy importante del tratado usada por el Comisionado mejicano, es de observarse que dos palabras enteramente del todo diferentes conforme á la definición inglesa se han usado en las traducciones inglesas y españolas; la usada en inglés "erosión" y en el español "corrosión."

Estas palabras en inglés aunque de parecido significado, no son por cierto sinónimas especialmente si se trata de aplicarlas aquí en un sentido geológico. La palabra corrosión se aplica principalmente en inglés á la acción de los acidos sobre los metales y, en tal sentido nunca se usa la palabra erosión. Webster da á erosión un sentido geológico aplicándolo á "la Erosive theory or hypothesis" y el "Century" da "Erosionist." In geology "one who holds to the Erosive theory" y da este ejemplo de erosión. "The great erosive effect of water on the clay soil of the west." "Science III, 214."

Como no puedo encontrar ningun ejemplo del uso de corrosión en un sentido geológico me inclino á creer que en este sentido fué intencionalmente dado por los firmantes del tratado, especialmente si se une al vocablo deposito en el artículo 1 del Tratado de 1884, puesto que la "erosión" del aluvión no siendo tan grande que sature por completo el agua y le impida llevarlo en solución para formar depósitos cuando el agua se asienta lo bastante; las dos palabras parecen, pues corresponder al fin que se propusieron los autores.

En cuanto á la expresión "lento y gradual" el eminente ingeniero civil Vernon Harcourt en su tratado científico sobre "Ríos y Canales" dice "los ríos además de llevar el agua llovediza al mar acarrean también aluvión. Gradualmente aunque lentamente, todos los rios llevan detritus hacia abajo de sus valles y los materiales de las montañas van bajando hacia el mar." (Véase página 12, vol. 1.)

Este autor usa de ambas palabras exactamente como cree el Comisionado de los Estados-Unidos que las interpretaron los autores de los tratados con relación á las alteraciones de las riberas del Río Grande. Para que algo sea lento y gradual no hay necesidad de ser constante y uniforme con relación al tiempo, pero puede ser del todo intermitente ó desigual en grados ó en pasos

progresivos como en el caso citado por el Comisionado mejicano en la pag. 8 "as in the human mind is augmented the wealth of knowledge, proceeding step by step or degrees, regularly, progressive, slow as a gradual increase of knowledge.

Esta misma cita ejemplifica un progreso lento y gradual como de la mitad de un período intermitente por el sueño y muy desigual en su grado de progreso, cuando despierta la imaginación y más ó menos dispuesta á las apercepciones en diferentes períodos desde la niñez á la vejez se dice también de un hombre que crece lentamente hasta la madurez en veinte un años, aunque tenga períodos espasmódicos de crecimiento rápido y lento tal como acontece con el Río Bravo, en Juárez: moviendo su cauce y sus bordes hacia el Sur lenta y gradualmente por erosión gradual de la ribera mejicana y depósitos en la ribera de los Estados-Unidos mil cuatrocientos metros en cuarenta y tres años del 1852 al 1895, ó sea un avance anual de treinta y dos metros.

En las páginas 11 y 12 de su informe el Ingeniero Consultor mejicano obtuvo 1400 metros como distancia del avance total hecho por el río en cuarenta y tres años sobre los terrenos en disputa y de allí deduce un avance anual de 32.57 metros, pero dice: "es de notarse que, como la destrucción de las riberas es casi nula durante seis meses del año, por las razones expuestas el promedio de treinta metros obtenido anteriormente debe duplicarse, siendo pues la cifra definitiva del avance anual la de sesenta metros."

El Comisionado de los Estados-Unidos no comprende la justicia ni la lógica matemática de tal proceder. En la pag. 15 de las argumentaciones del Comisionado mejicano se cita un párrafo del informe mixto de los Comisionados á sus respectivos gobiernos, fechado en San Antonio, Texas, en Enero 15 de 1895 é impreso en el informe especial del Comisionado de los Estados-Unidos en la pag. 9, por el cual se pretende hacer decir al Comisionado de los Estados-Unidos que todos los cambios en la parte superior del río eran verdaderas avulsiones. En esto está seriamente equivocado el Comisionado mejicano y le sorprende al Comisionado americano que haya incurrido en ese error, por que también el autorizó con su firma el informe escrito. Lo que dijo el Comisionado de los Estados-Unidos y se puede lealmente entender por el texto completo del informe, es que los cambios avulsivos en la parte superior del río eran verdaderamente avulsiones como se ha probado posteriormente en el fallo del caso de la "Isla de San Elizario No. 10"

en contra posición á los cambios de los bancos en la parte inferior del río. No se refería á los cambios lentos y graduales por corrosión y depósito, habiéndose escrito esto en vista enteramente de las cuestiones de avulsión, al someter á los respectivos gobiernos cada Comisionado la importante cuestión de saber si los cambios en los bancos se seguirían tratando por la Comisión, ó se eliminarían de los caracterizados en el Tratado como cambios avulsivos. El informe principiaba después del encabezamiento preliminar como sigue:

"Los Comisionados encontraron tan distinta de lo que se habían imaginado la formación de los bancos, que, después de largas y bien meditadas consideraciones, llegaron á convenir en que la manera de formarse, y su carácter sumamente variable, no pudieron haber sido comprendidos en la Convención que originó los tratados de 1884 y 1889, y en tal virtud ambos Comisionados se ven en la necesidad de consultar separadamente á sus respectivos gobiernos un nuevo examen de los artículos 1 y 2 del tratado de 1884, en lo que se refiere á bancos, supuesto que, uno y otro artículos citados, parece que consideran que todo banco es debido á un cambio por avulsión.

"Para apoyar estas conclusiones á que hemos llegado conviene tener en cuenta que las 1300 millas que tiene la línea divisoria internacional desde El Paso hasta el Golfo de Méjico pueden dividirse en tres grandes secciones de muy distinto carácter."

"La primera, desde El Paso hasta Presidio del Norte, en la que por virtud de la grande inclinación de la corriente y la firme consistencia de la tierra, los cambios del canal del río son debidos á verdaderas avulsiones, y comprendidos en los descritos por el Attorney General Cushing, en su dictamen de 11 de Noviembre de 1856, es á saber: entre aquellos que "alejándose del lecho primitivo del río forman por sí mismos un nuevo canal en otra dirección," dejando islas cuya longitud paralela á la orilla del río es muchísimo mayor que su latitud, aislando tierras cultivadas, con habitantes á veces, y originando que "la nación cuyo territorio se corta de tal modo debe considerarse más bien perjudicada que beneficiada por conservar el límite natural del río."

"La segunda sección del río, se halla comprendida entre Presidio del Norte y Río Grande City: en ésta, la pendiente de inclinación es aun mayor que en la primera, las riberas sólidas y resistentes, por ser en gran parte de formación de roca, y pocos los cambios que de cualquier género se verifican en el canal.

"La tercera sección, de Río Grande City al Golfo, comprende 108 millas en línea recta y 241 siguiendo el curso del río, el cual corre por terrenos bajos de aluvión, en donde la tierra tiene poca consistencia, y con tan suave pendiente que el canal del río siempre está cambiando de derecha á izquierda é incesantemente corroyendo la ribera cóncava y haciendo depósitos en la convexa, tanto

en las aguas bajas como en las altas aunque, por supuesto, los cambios, son mucho mayores en la época de las crecientes. Estas corrosiones son más grandes en donde el agua golpea la ribera en la tangente de su curva en ángulo más obtuso; y cesan cuando el ángulo se hace tan agudo que el agua—tanto por su volumen y velocidad cuanto por resistencia de la tierra—se desvía rapidamente. Entonces cesa verdaderamente la corrosión y comienza el río á girar sobre sí mismo circularmente y hace un corte tal, que la tierra que separa de este modo, toma la forma de una pera ó calabaza vinatera.

"Illustrará este punto el examen de los planos de los cuatro bancos que hemos inspeccionado, los que, en realidad, son cinco, pues uno de ellos, el de Santa Margarita es positivamente un doble banco.

"Estos bancos no escogidos á proposito, sino tomados al acaso según las querellas de sus reclamantes, son el tipo de todos los demás. Tal vez existen cuarenta ó cuarenta y cinco bancos más de semejante carácter, en esta sección: y probablemente, destribuidos por igual en ambas riberas, entre Río Grande City y el Golfo. Tal vez no tienen, más que unas cien ó doscientas yardas frente al río por término medio; pero la longitud de la línea divisoria, siguiendo el canal más profundo en el estero ó lencho antiguo del río, es aproximadamente de unas cuatro ó cinco millas, y viene á aumentar la línea limítrofe con algunos centenares de millas, lo cual en vez de simplificar las cuestiones de límites vendrá á aumentar más la confusión que ya existe á este respecto. Estos bancos son bajos y, por regla general de nueva formación, raras veces ocupados por habitante alguno y expuestos á inundaciones como casi todos los años acontece.

"Después de un examen maduro de todas estas cuestiones, en vista de nuestra experiencia de los cuatro bancos ya inspeccionados y habiendo escuchado la opinión de muchos individuos propietarios de otros bancos, creemos de nuestro deber, antes de pasar adelante, someter estos hechos á la atención de nuestros gobiernos, en la creencia de que pudieran acceder á la modificación de los artículos 1 y 2 de la Convención de 1884, en el sentido de que todo banco que tenga menos frente sobre la corriente del río que profundidad no se considere como cambio avulsivo según lo exige el tratado, sino que en estos casos se faculte á la Comisión para hacer la traslación del banco á la jurisdicción del país en donde está situado, con la reserva de que las escrituras de propiedad á que se refiere dicha traslación, se hagan por las autoridades del país que trasfiere á aquel que recibe. Los habitantes del terreno, si los hubiere conservarán la ciudadanía del país á que pertenecen, si tal fuere su voluntad.

"Como el artículo 8 del tratado de 1889 previene que el fallo de la Comisión será obligatorio para ambos gobiernos, á menos que uno de ellos lo desapruebe dentro de un mes contado desde el día en que se haya pronunciado, y como la resolución de este

asunto ocuparía probablemente á los dos gobiernos más de treinta días, los Comisionados han considerado preferible no fallar por ahora sino hasta no recibir mayores instrucciones de sus gobiernos y después que los Comisionados hayan explicado verbalmente y con minuciosidad los puntos que ahora le consultan."

Por lo que se ha citado de nuestro informe mixto, se debería entender claramente qua no se hacía intencionalmente alusión á los cambios lentos y graduales, pero á las dos clases de cambios avulsivos; los verdaderos y los que considerabamos nosotros falsos (los bancos) pero si se necesita mayor prueba citaré nuestro fallo, debidamente convenido sobre el banco de Camargo aunque no resuelto oficialmente según lo explica el último párrafo del informe arriba citado:

" Por haber terminado los ingenieros sus mapas é informes en el caso del " Banco de Camargo " No. 2, la Comisión mixta se reunió en la oficina de la Comisión . . . para deliberar y decidir difinitivamente y después de maduro examen del caso, de una inspección personal de los informes y mapas de los ingenieros, así como del testimonio recogido, comprobó lo siguiente:

" En 1865 el Río Grande, en frente de Río Grande City, empezó por corrosión gradual de la ribera mejicana y depósitos en la ribera americana á cambiar hacia el Sur con dirección á Camargo, y continuó cambiando así gradualmente durante 27 años; y en 1891, á consecuencia de una avulsión repentina abandonó el antiguo canal al rededor de las acreciones, por medio de un corte súbito en el punto 'A' ú otro cercano en el mapa adjunto. (Hoja No. 1.) "

El fallo fué impreso in-extenso; y, á petición del Comisionado mejicano se le diero algunos ejemplares, para acompañarlos á su informe sobre los cuatro bancos y los que sin duda se encuentran en los archivos del Gobierno de Méjico, como lo están en los archivos del gobierno de Wáshington.

Por ese fallo se observará que el Comisionado mejicano convino con el Comisionado de los Estados-Unidos en el caso del banco de Camargo que en los 27 años de 1865 á 1891, el río " por corrosión gradual de la ribera mejicana y depósito en la ribera americana " cambió al Sur, tal cual lo representa la hoja No. 1, y aplicando la escala á dicha hoja se observará que el río durante los 27 años mencionados, se movió 2350 metros ó sea un promedio anual de 87 metros. El promedio mayor anual del movimiento del río en el caso de El Chamizal, fué de 32 metros; por manera que tendrá que explicar el Comisionado mejicano, por que encontró que el movimiento del río en el caso del banco de Camargo es gradual, mientras que no puede convenir que un movimiento anual de 32 metros es gradual.

En el caso del " Banco de Vela " se llegó á la propia decisión, esto es que la formación del banco fué hecha " gradualmente por corrosión de la ribera americana y depósito sobre la ribera mejicana " y luego cortando por avulsión. Véase la hoja No. 2 del informe ya mencionado.

En el " Banco del Grangeno " igual convenio hubo, á saber; que esta formación gradual continuó hasta cerca del año de 1870, y entonces por avulsión repentina—en el punto marcado I, ú otro cercano del mapa referido hoja No. 3, abandonó su antiguo canal " y debido á un corte abrió otro nuevo."

En el caso de otro banco el de " Santa Margarita " se llegó á igual decisión en las siguientes palabras:

" Gradualmente reformado por corrosiones de un banco y depósito en el otro hasta por el año de 1880 ó 1881, cuando por un cambio repentino ó avulsión, el río abandonó su cauce antiguo y abrió uno nuevo en el punto " E " ú otro cercano del marcado en el mapa adjunto. (Hoja No. 4.) "

Un ejemplar de cada una de estas decisiones probables y formalmente convenidas y detalladas van adjuntas para la mejor inteligencia de aquellos que tengan que tratar de este caso en lo futuro.

Se suplica también que se tenga presente el informe inpreso sobre los cuatro casos de bancos, que comprenden los mapas y testimonios recibidos, para demostrar esos movimientos lentos y graduales por corrosión y depósitos que fueron admitidos y convenidos extra-oficialmente por ambos Comisionados y sólo se dejaron de pronunciar por las razones siguientes que constan en acta: " Como el artículo 8 del tratado de 1889 previene que el fallo de la Comisión será obligatorio para ambos gobiernos, á menos que uno de ellos lo desapruebe dentro de un mes contado desde el día en que se haya pronunciado, y como la resolución de este asunto ocuparía probablemente á los dos gobiernos más de treinta días, los Comisionados han considerado preferible no fallar por ahora sino hasta no recibir mayores instrucciones de sus gobiernos y después que los Comisionados hayan explicado verbalmente y con minuciosidad los puntos que ahora le consultan."

El testimonio tomado en cada caso demuestra que las aguas más altas en El Paso tienen una altura de 9 á 10 piés, mientras que en Camargo y Río Grande City suben hasta 24.

Si no hubiéramos decidido que el primer cambio en cada banco fué " lento y gradual " conforme al Art. I del Tratado de 1884, la línea divisoria hubiera quedado exactamente adonde se colocó

en 1852 y no hubiera habido necesidad de tratar los subsecuentes cambios avulsivos ó "cortes," ni en manera alguna molestar á nuestros respectivos gobiernos con la muy grave cuestión de un cambio en el tratado para eliminar el segundo cambio avulsivo ó corte porque si los primeros cambios fueron avulsivos, los segundos ó sean cortes no tendrían importancia supuesto que el río allí no sería la línea divisoria y ésta quedaría en el cauce antiguo y seco del río tal cual fué establecida en 1852.

En sus conclusiones página 3, el Comisionado mejicano asienta que el río cambió imperceptiblemente en un período de 12 años, del 1852 al 1864. El testigo Serna dice: "En 1864 hubo una gran inundación" El testigo Ochoa dice: "de 1858 á 1860 hubo algunos ligeros cambios" El testigo Flores dice: "Cambió de 1864 ó 1865 hasta 1882" El testigo Schutz, en contestación á la pregunta "¿Ha cambiado el río de 1854 á 1864?", replicó: "Como dije antes, cambiaba algo cada año, gradualmente, pero no de tal manera que pudiera observarse tremendo cambio" El testigo Magoffin dice en contestación á la pregunta: ¿del 1856 al 1882 ha cambiado año por año el cauce del río?" "Si Señor ha cambiado al Sur siempre que las aguas eran altas." El testigo Ochoa dice "Si ha habido ligeros cambios antes de 1864 y después de 1868" "Quiero decir que cada cambio fué pequeño de por sí" El testigo Samaniego dijo en contestación á la pregunta: "¿De 1852 á 1859 hizo el río algún cambio notable hacia Méjico?" Cuando volví en 1859 el río se acercaba más á su actual localización."

Anson Mills, delegado topógrafo, en aquella época y ahora Comisionado de los Estados-Unidos, en su levantamiento que comprendió parte de los terrenos disputados fecha 8 de Febrero de 1859, encontró una acreción á la ribera de los Estados-Unidos de 38 acres comparativamente á la medición hecha por W. L. Diffendorffer, en 25 de Marzo de 1853, y puesto que el ingeniero consultor mejicano ha manifestado algunas dudas acerca de la correccion del levantamiento, el Comisionado de los Estados-Unidos, desea manifestar que los terrenos fueron medidos con la debida precisión, y su extensión calculada con la exactitud usual. Las riberas estaban bien definidas con vegetación naciente y no puede haber duda de que hubo una acreción de terreno correspondiente al número de acres citados. Por lo tanto añadiendo á esta medición el testimonio de los testigos de referencia y suponiendo que el aumento continuó en los seis años siguientes en la misma relación, debiera

la historia del lugar se le conoce por el "turbio" Missouri; y también, que durante la desaparición, causada por ese procedimiento de una masa del borde que puede ser repentino y visible no hay traspaso de tal cuerpo sólido de tierra á la ribera opuesta, ni nada que se parezca á la creación visible é instantanea de un borde en esa orilla. La acreción como quiera que se realice la diminución es siempre gradual y debida al depósito imperceptible de partículas flotántes de tierra. Existe siempre excepto en ciertos casos de avulsión que podrán verse más tarde en todo caso de aumento de ribera un procedimiento meramente gradual é imperceptible. En un instante y mientras la vista se posa sobre la corriente no hay amontonamiento de tierras ó raíces en la lado del río en formación. Ningun ingeniero por perito que sea podría indicar adonde va á dar la tierra de la ribera y disuelta en el río. El borde que cae ha desaparecido en la masa flotante de tierra y agua y las partículas de tierra pueden quedar á una ó á cincuenta millas más abajo y sobre cualquiera de las dos riberas. No existe por rápido que sea el proceso de substracción ó de adición, desagregamiento alguno de tierra de un lado y depósito del mismo en el otro.

"Lo único en que se distingue este río de los demás respecto de la acreción es en la rapidez del cambio causado por la volocidad de la corriente; y esto en sí mismo, por la naturaleza misma de las cosas, no cambia el principio en que descansa el derecho á este respecto. Nuestra decisión es, que no obstante la rapidez de los cambios en el curso del canal y el deslave de un lado para el otro, la ley de la acreción es aplicable al río Missouri, como á los demás, y esto no solamente con respecto á los derechos de proprietarios particulares sino también en lo que se refiere á líneas divisorias entre Estados.

"Por lo tanto la línea divisoria entre Iowa y Nebraska es una línea variable, en tanto que la afectan los cambios de acr ción y disminución por el mero desgastamiento de las aguas de la corriente.

"Aparece, sin embargo, de las declaraciones, que el río en 1877 arriba de Omaha que seguía su curso en forma de yugo, cortó repentinamente al través del cuello del yugo y se abrió á sí mismo un nuevo canal. Esto no cae bajo la ley de acreción sino bajo la de avulsión. Por este cambio de un nuevo canal la línea divisoria no cambió y quedó adonde estaba antes de la avulsion, por el centro del antiguo canal; pero esto solamente mientras que las aguas del río no vuelvan á su primitivo cauce y que el río llegue á servir de límite fijo é invariable, cualesquiera que sean los cambios del río en su nuevo canal. Creemos que con estas observaciones hemos indicado tan claramente como es posible la línea divisoria entre los dos Estados, y bajo este principio las partes pueden arreglarse para designar dicha línea y tal resolución causará ejecutoria. Si no es posible un arreglo la Corte nombrará entonces una Comisión para hacer la topografía é informes de *acuerdo con* las ideas que se han expresado."

sentencia que clara y contundentemente falla que el cambio ocurrido allí no sólo fué lento y gradual pero imperceptible, tomado el movimiento en conjunto y con referencia á ambas riberas pues mientras que como en el caso de "El Chamizal" la pérdida de un lado era bien perceptible por la rápida y continua caida de porciones grandes de las riberas, por el otro la ganancia era lenta é imperceptible debida á depósitos de aluvión debajo del agua y, teniendo en cuenta el hecho de que el movimiento anual era cerca de tres veces mayor que el de "El Chamizal" 32 metros.

Aplicando la escala al mapa que se acompaña á este caso, aparece que hay una separación de 1,800 metros entre el río de 1856 y el de 1877, ó sea en un período de 21 años lo cual da un promedio anual de 85 metros. Lo siguiente está tomado del fallo:

"El caso se nos sometió por medio de testimonio y no por alegatos. Ahora bien ¿ que hechos se desprenden de ese testimonio? El río Missouri es un río que serpentea por un valle de anchura variable, y cuyo subsuelo depósito de muchos siglos es generalmente de arena movediza. Al construirse el puente del ferrocarril "Union Pacific" sobre el río Missouri, en las inmediaciones de las vías disputados los constructores llegaron á tocar piedra sólida á 65 piés bajo la superficie allí encontraron un trónco de pino de un pie y medio de diámetro depositado por supesto mucho tiempo atrás. La corriente es rápida, mucho más que el promedio de los ríos comunes; y con motivo de la nieves de las montañas hay dos crecientes en el volúmen de las aguas, conocidas por las crecientas de Abril y la de Junio.

"El gran volúmen de agua que corre en la época de esas crecientes unido á la rapidez de su corriente ejerce una grande y rápida acción sobre el terreno deleznable de sus riberas. Cuando ataca directamente la ribera en una vuelta de su curso y esa ribera es de la arena suelta que se halla en el valle del Missouri; no es extraño que la raspadura y deslave sea rápido y considerable.

"Frecuentemente cuando por la parte de arriba del substratum de arena suelta, hay un depósito de suelo relativamente sólido, el deslave de la arena por abajo origina la caida instantanea dentro del río de trozos del superstratum de regular longitud y anchura; por manera que puede decirse en cierto sentido que la diminución de los bordes no es gradual ni imperceptible sino repentina y visible. A pesar de esto, deben tenerse presentes dos casos, familiares á los ribereños del Missouri reveladas por las declaraciones; que si bien pueden ocurrir visibles é instantaneos desplomes dentro del río, de pedazos considerables de sus riberas tales pedazos no bajan por la corriente en masa sólida y compacta sino que se desintegran y separan en partículas de tierra que se lleva el agua dando á la corriente ese color por el que en

la historia del lugar se le conoce por el "turbio" Missouri; y también, que durante la desaparición, causada por ese procedimiento de una masa del borde que puede ser repentino y visible no hay traspaso de tal cuerpo sólido de tierra á la ribera opuesta, ni nada que se parezca á la creación visible é instantanea de un borde en esa orilla. La acreción como quiera que se realice la diminución es siempre gradual y debida al depósito imperceptible de partículas flotántes de tierra. Existe siempre excepto en ciertos casos de avulsión que podrán verse más tarde en todo caso de aumento de ribera un procedimiento meramente gradual é imperceptible. En un instante y mientras la vista se posa sobre la corriente no hay amontonamiento de tierras ó raíces en la lado del río en formación. Ningun ingeniero por perito que sea podría indicar adonde va á dar la tierra de la ribera y disuelta en el río. El borde que cae ha desaparecido en la masa flotante de tierra y agua y las partículas de tierra pueden quedar á una ó á cincuenta millas más abajo y sobre cualquiera de las dos riberas. No existe por rápido que sea el proceso de substracción ó de adición, desagregamiento alguno de tierra de un lado y depósito del mismo en el otro.

"Lo único en que se distingue este río de los demás respecto de la acreción es en la rapidez del cambio causado por la volocidad de la corriente; y esto en sí mismo, por la naturaleza misma de las cosas, no cambia el principio en que descansa el derecho á este respecto. Nuestra decisión es, que no obstante la rapidez de los cambios en el curso del canal y el deslave de un lado para el otro, la ley de la acreción es aplicable al río Missouri, como á los demás, y esto no solamente con respecto á los derechos de proprietarios particulares sino también en lo que se refiere á líneas divisorias entre Estados.

"Por lo tanto la línea divisoria entre Iowa y Nebraska es una línea variable, en tanto que la afectan los cambios de acr ción y disminución por el mero desgastamiento de las aguas de la corriente.

"Aparece, sin embargo, de las declaraciones, que el río en 1877 arriba de Omaha que seguía su curso en forma de yugo, cortó repentinamente al través del cuello del yugo y se abrió á sí mismo un nuevo canal. Esto no cae bajo la ley de acreción sino bajo la de avulsión. Por este cambio de un nuevo canal la línea divisoria no cambió y quedó adonde estaba antes de la avulsion, por el centro del antiguo canal; pero esto solamente mientras que las aguas del río no vuelvan á su primitivo cauce y que el río llegue á servir de límite fijo é invariable, cualesquiera que sean los cambios del río en su nuevo canal. Creemos que con estas observaciones hemos indicado tan claramente como es posible la línea divisoria entre los dos Estados, y bajo este principio las partes pueden arreglarse para designar dicha línea y tal resolución causará ejecutoria. Si no es posible un arreglo la Corte nombrará entonces una Comisión para hacer la topografía é informes de acuerdo con las ideas que se han expresado."

En la página 11 el Comisionado mejicano, comparando el río Missouri al río Grande, usa estas palabras: "pero por lo demás la acreción se verifica siempre—nótese bien siempre—por imperceptibles depósitos de partículas de tierra que están en flotación, cosa que no acontece en el Bravo."

"El río Missouri está constantemente corroyendo sus riberas" y "no permanece seco por cerca de medio año."

Todos los testigos en excepto Serna el caso de "El Chamizal" declararon que los depósitos en el río Grande eran imperceptibles mientras que las corrosiones eran perceptibles como lo eran en el Missouri. Y ninguno de ellos declaró "que permanecía seco durante medio año."

En verdad el Missouri es un río más rápido y turbulento que el río Grande, con épocas torrenciales bien marcadas, y por otra parte con un régimen igualmente variable, en apoyo de lo cual conviene extractar algunas declaraciones periciales recibidas en el caso.

Jorge Smith, ingeniero declaró lo siguiente:

"El cauce del río Missouri es algo sobre lo cual ni el hombre ni nadie parece tener dominio alguno. En Junio de cada año hay una creciente que lo lleva de bordo á bordo y á veces hasta los esteros. La gran creciente de 1881 fué ocasionada por la ruptura de una barrera de hielo. En mi experiencia y conocimiento de ingeniería no conozco otro río como el Missouri en cuanto á su cauce y riberas. El Platte, es el que más se le asemeja. Conozco el Ceder, Iowa, Missouri y el Platte, el Missouri y el Platte sobre pujan á todos."

"Como ingeniero civil y conocedor de los grandes ríos del mundo nunca he sabido de ninguno parecido al Missouri ó de alguno que tenga tan malas mañas."

Juan S. Smiley, ingeniero, atestigua como sigue:

"Una friolera—como un tronco—snag—desviaría la corriente de manera que comenzara á cortar y cortará quizá 100 piés. Mi recuerdo es que ha habido allí como 2,000 acres de tierra formados en 18 años en frente á la costa de Nebraska. Si en un año se hace la topografía de determinada porción de terreno, para continuarla en el siguiente se encontrará una acreción ó un corte, que en ocasiones no llegará á 10 piés, pero que en 19 años es de milla y media de Norte á Sur."

Juan Mc.Pherson, capitan de vapor, declaró lo siguiente:

"Cuando empecé á trabajar en 1856 había pocos cortes. La corriente golpeaba la ribera—la ribera de Iowa—en Busha Bend y en Saratoga Bend, del lado de Nebraska. El corte de ambas playas era muy ligero entonces y no era perceptible ó visible. El primer corte fuerte fué en 1862 ó 1863 según creo. Durante

algunas épocas de las altas aguas y en algunas estaciones las riberas se cortaban más que en otras. Según mis recuerdos había días en que parecía cortarse hasta 50 piés atrás."

FINALMENTE.

El Comisionado de los Estados-Unidos insiste en que el tratado claramente especifica que no hay más que dos clases de cambios en el río el primero claramente definido en el artículo 1 como "corrosión lenta y gradual y el depósito de aluvión" y el segundo definido en el artículo 2 como "abriendo un nuevo canal" ó en donde hay más de uno haciendo más profundo otro canal que no sea el que se marcó como parte de la línea divisoria al tiempo del reconocimiento hecho conforme á dicho tratado." Cualquier otro cambio no especificado, como implica la proposición mayor del silogismo del Comisionado mejicano, no tenemos autoridad para considerarlo y nuestras conclusiones deben de ser en favor de uno ó de otro según el Tratado lo especifica.

Todos los testigos excepto Serna declararon que la ribera mejicana nunca fué inundada por las crecientes, haciendo pues imposible que el río se hubiese abierto, para sí un nuevo canal y abandonado su antiguo hacia el Sur.

Si se apoyan las ideas del Comisionado mejicano, entonces nuestros trabajos en los cuatro bancos deben de desecharse y la línea divisoria, como aquí en "El Chamizal" colocada en donde la fijó la Comisión de 1852: pues allá los cambios han sido menos "lentos y graduales" que aquí; mientras que la subida y bajada de las crecientes se ha verificado con más del doble de fuerza allá que aquí, y la estación torrencial es de igual modo terminante.

En opinión del Comisionado de los Estados-Unidos si el cambio en "El Chamizal" no ha sido "lento y gradual" por medio de corrosión y depósito conforme al espíritu del artículo 1 del Tratado de 1884, entonces no se encontrará uno sólo en todas las 800 millas en que el río Grande, con sus riberas de aluvión, forma la línea divisoria; y el propósito del Tratado no se habrá logrado por ambos gobiernos, pues quedará sin sentido é inútil, y dejaría forzozamente la línea divisoria en esas 800 millas continuamente donde se fijó en 1852, la cual no tendría literalmente puntos de contacto con el río actual excepto en sus centenares de intersecciones con él; y restaurar y restablecer esa línea divisoria sería laborioso trabajo que exigiría muchos empleados y largos años, demandaría á cada gobierno gastos de varios centenares de miles de pesos, y obligaría á dividir uniformemente los terrenos entre las naciones y propietarios particulares,

que están hoy bajo la creencia que durante los últimos cuarenta años los cambios han sido graduales y que han reputado el río generalmente, como línea divisoria bajo su propia autoridad y posesión, pues debe recordarse que el río en las tierras aluviales que constituyen las 800 millas no tiene en ningun lugar la misma localización que tenía en 1852.

Para ilustrar más la exactitud de esta aseveración véanse el informe de la topografía de los cuatro bancos, Camargo, Grangeno, Vela y Santa Margarita, y por él se observará que el río viejo que fija la línea divisoria de Emory y Salazar, no tiene puntos de contacto con el río actual, excepto en los puntos de intersección y esto es exacto á lo largo de todo el río, excepto en la tercera sección central, en que está limitado por riberas sólidas y no por depósitos de aluvión.

El cambio ocurrido frente al viejo Fuerte Bliss situado solamente á una milla más abajo que "El Chamizal," comprende la misma extensión de terreno—600 acres—aproximadamente; y ya quedó demostrado abundantemente por las declaraciones recibidas que esos terrenos acrecieron al lado mejicano, debido á las mismas crecientes y precisamente en la misma manera, modo y condiciones que en "El Chamizal," y allí tendría que seguir una nueva línea divisoria terrestre idéntica á la de 1852, y todas las curvas subsecuentes del río hasta el Golfo por razón de sus riberas aluviales tendrán por consecuencia forzoza que rectificarse igualmente no subsistiendo de común para ambas naciones más que los cruzamientos del río.

Por tres buenas y sólidas razones el "onus probandi" en este caso corresponde á Méjico.

Primera. Vattel dice: lib. 1, cap. 22, art. 268. "En caso de duda todo territorio que termina en un río, se presume no tener otro límite que el río mismo; porque no hay cosa más natural que tomar un río para límite cuando se forma una colonia—settlement—y en caso de duda debe presumirse aquello que es más natural y posible."

Segunda. Durante 42 años de 1852 á 1894, Méjico no hizo uso de sus derechos, si los ha tenido, no solamente por no haber presentado ninguna reclamación sobre el terreno actualmente disputado sino por haber consentido la jurisdicción sobre él de los Estados-Unidos.

Tercera. Siendo Méjico el quejoso á él corresponde probar el cambio avulsivo traido por "la apertura de un nuevo canal y el abandono del antiguo" y no basta que diga que el cambio no fué gradual, uniforme é incesante porque entonces—no importando

de que manera haya cambiado el cambio debe ser avulsivo y la antigua línea divisoria restablecida sin mayores pruebas, porque cualquiera otro cambio de los que implica la mayor de las premisas del silogismo del Comisionado mejicano y que debe ser alegado y probado, pudiere ocurrir por medios artificiales como jetties muelles, obstrucciones ó dragas etc. que están prohibidas en el art. 11 del tratado de 1884."

Siento, pues, por las razones aducidas, no poder convenir con el Comisionado mejicano que el cambio en el Chamizal caso No. 4 fué ocasionado por la apertura de un nuevo canal ó haciendo otro más profundo del lado mejicano de acuerdo con el artículo II del Tratado de 1884, pero soy de la opinión terminante que el cambio fué ocasionado por causas naturales, por "corrosion lenta y gradual" y depósito del aluvión "conforme al art. 1 del tratado de 1884.

El Comisionado de los Estados-Unidos habiendo concluido su réplica á las conclusiones del Comisionado mejicano, y los dos Comisionados no pudiendo llegar á un entendimiento, decidieron concluir el estudio del caso, conocido por "El Chamizal" No. 4, informando cada cual á su gobierno del desacuerdo y remitiendo copias completas de las actas en este caso.

La Comisión mixta en seguida se aplazó á las 12-30 P. M.

F. JAVIER OSORNO. ANSON MILLS.
S. F. MAILLEFERT. JOHN A. HAPPER.

DOCUMENTS AND PROCEEDINGS RELATING TO THE APPLICATION OF THE MEXICAN COMMISSIONER FOR THE REOPENING OF THE CHAMIZAL CASE.

Department of State.
International (Water) Boundary Commission.
United States and Mexico.
Treaties of 1884 and 1889.

EL PASO, TEXAS, *August 8th, 1896.*

To the Honorable, The SECRETARY OF STATE,
Washington, D. C.

SIR:—On the 4th instant I transmitted to you the voluminous proceedings in the Chamizal Case, No. 4, on the last page of which, in the journal of July 17th, you will observe the case was finally terminated and duly signed by both Commissioners and their Secretaries. The signatures however, were not affixed until the 27th, owing to the delay of the Mexican Commission in translating and copying of the English into Spanish.

Soon after the affixing of the signatures however, the Mexican Commissioner through his Secretary, made verbal application to have the case reopened and submitted on the first instant, a voluminous addition to his compendium, of fifty-five pages of manuscript; a translation in manuscript of which I enclose herewith (Marked Exhibit "A"). I replied in writing (copy enclosed marked Exhibit "B") declining to reopen the case.

On the second instant, I received from the Mexican Commissioner a letter (copy in translation enclosed marked "C"), requesting a meeting of the Commission on the succeeding day. The Joint Commission met August 4th, and proceeded to take up and formulate a decision in the Island Case, after agreeing to which, the Mexican Commissioner announced, as will be observed in the incomplete record (copy enclosed marked "D") that he declined to sign it until I reopened the Chamizal Case, and so continued to decline every other proposition made to him at the meeting, announcing that it was dissolved, and leaving the room in a state of displeasure, notwithstanding, I informed him that I would send his manuscript to the Department for whatever consideration it might be given there; (See enclosure marked "E") but I was firm

in my refusal to reopen the case, and shall maintain this attitude unless advised by the Department to take a different course, as in my opinion, everything has been adduced on both sides that is necessary to a full understanding of the case, it having been prolonged beyond reason already.

In March last the Mexican Commissioner informed me verbally that he was satisfied that the Island belonged to the United States and he would make no contention for it, but would not sign the decision until a conclusion was reached in the Chamizal Case.

In the Journal of June 25th (See copy enclosed marked "F") he again admits an informal decision but the Mexican Consulting Engineer refused to sign a joint report which he has since signed, and which was submitted to the Joint Commission at its session on the 4th instant (See enclose "D", page 2).

Sefior Ibarrola is still in Mexico and I have no knowledge that the difficulties between himself and Mr. Osorno have been terminated save that in your telegram of the 4th instant.

I regret to be compelled to communicate such disagreeable information, but deem it my duty to do so.

I have the honor to be,

Very respectfully your obedient servant,

ANSON MILLS
Colonel 3rd Cavalry, U. S. A., Commissioner.

[Inclosure.]

"A"

CIUDAD JUÁREZ, *July 1896*

The Joint Commission met at the Office of the Commissioner for ——— at ———

Thereupon the Mexican Commissioner stated[a] that he had read with proper attention the reply presented by the Commissioner for

[a] [The history of this application on the part of the Mexican Commissioner to reopen the Chamizal case is given in a letter of the United States Commissioner to the Secretary of State of August 8th, 1896 (supra, page 321). The translation here printed was evidently hastily made in order to enable the United States Commissioner to respond without delay. (See letter of United States Commissioner to the Mexican Commissioner dated August 4th, 1896, page 340 infra.) The translation is obviously inartistic, but seems perfectly intelligible and entirely sufficient for all practical purposes, and is reproduced literatim from the archives of the Department of State, suggested emendations being indicated by brackets and parentheses. The Spanish text of the Mexican Commissioner's communication has not been found as yet, and further search of the archives of the Department of State and of the United States Section of the International Boundary Commission is being made. If not found in the United States archives it can doubtless be supplied from the Mexican archives.—Agent's note.]

the United States and considered it absolutely indispensable that some very important rectifications and explanations [elucidations] be placed on record, to the end that the persons who should have to decide later on the case El Chamizal may not lack of any of the necessary data for the rendering of a just and equitable decision in favor of the claim presented by the Government of Mexico.

The observations and explanations [elucidations][a] to which he calls special attention and that may serve as synthesis, and which for the sake of clearness and conciseness are presented here by the Mexican Commissioner in the form of notes and citing the respective pages of the journal [acta] comprising the rejoinder of the American Commissioner are:

No. 1. Page 2. The American Commissioner is of opinion that in order to pass upon this case properly, it ought to be withdrawn from the bearings of international law and be decided only in conformity with Articles 1 and 2 of the Convention of 1884 entered upon between Mexico and the United States.—This has been done by the Mexican Commissioner in his conclusions, the more so as he stated therein that Articles 1 and 2 of said Convention are the exact expression of the doctrine upheld by Mr Andrés Bello and Mr José Maiá Pando and accepted by Attorney General Cushing.—But what could not but surprise the Mexican Commissioner is that the American Commissioner should have mutilated the text of Article 2 suppressing the following words that have special bearing on this case; to wit: "Any other change occasioned by the force of the current."—The object in said intentional mutilation, [being] for the purpose of sustaining a sophistry.—

No. 2 Page 4.—On account, no doubt, to that the Commissioner for the United States feels the absurdity of continuing to hold that the change effected by the river during a period of a few years, from 1864 to 1868 and only during the floods, and with such force that it destroyed houses and cultivated fields at "El Chamizal", was due to a slow and gradual corrosion, does he make now the extraordinary [strange] assertion that where the treaty says clearly, in Spanish, corrosion, it must be understood as erosion and that corrosion and erosion are not synonimous in English. Thus, Mr Mills tacitly affirms that were the word of the Treaty

[a] [Brackets in original translation.—Agent's note.]

that is to serve as guide the word corrosion, it could not be sustained any longer that the corrosion had been slow and gradual; but that, since it is erosion, a synonym of corrosion, such erosion could have been slow and gradual, although the river dries up during a part of the year and notwithstanding the destructive force of the floods [avenidas]. Not much effort has the Mexican Commissioner to exercise, in order to prove that the word corrosion, is the only one existing in Spanish, the only one used in the Mexican text of the Convention of 1884, and the legal one in deciding this case.—By adding to the above the fact that Webster—an authority superior to Col. Mills as regards to the English language—gives erosion as synonym of corrosion, precisely, the objection presented by the Commissioner for the United States falls to the ground.[a]

The last edition of the Dictionary of the Royal Spanish Academy which I have before me, on its Page 444 gives the word "erogatorio" and "erotema" as the next one following thereto; and, consequently, there is no such word as "erosion," in Spanish. If, notwithstanding the above, the signers had wished to use the word erosion in the geological sense used by Mr Mills, and there being no equivalent for same, in Spanish, the spanish word corrosion would have been employed with the english one (erosion) in parenthesis, or in precisely the same manner as the english word jetties that is underlined in Article 3 of said Convention of 1884. Let us now see what Webster's Dictionary says in its edition of 1895 on page 507, column 3: "Erosion. 1.—The act or operation of eroding or eating away.—2. The state of being eaten away, *corrosion*, canker." This is all that said lexicon gives as to the word erosion, and Mr Mills will thereby see that, according to the indisputable authority of Webster, erosion is certainly [a] synonym of corrosion and has no special geological acceptation; for which reason it is to be presumed that the American Commissioner has not found any one example that he wished to meet, as stated in his textual words ("As I can not find any instance of the use of corrosion in a geological sense").[b]—

Resuming: 1st. The legal text written in Spanish, the only one with obligatory force upon Mexico, has the word "*corrosion*" and not "erosion".—2d. In English, erosion is synonym of corrosion.—3d.—All the arguments of Mr Mills tend to prove that

[a] [As regards the equivalence of the Spanish *corrosion* and the English *erosion* as used in the treaty see Mr. Romero to Mr. Bayard February 27, 1889 (infra, p. 755), and Mr. Bayard's reply of March 1, 1889 (infra, p. 757).—Agent's note.]

[b] [Parentheses in original translation.—Agent's note.]

in the case of "El Chamizal" there was an erosion in the gological sense not defined by Webster and of which no one example of such acceptation could be found.—Thence, that *erosion* to which the Commissioner for the United States gave birth in his mind, has nothing to do with the *corrosion* appearing in the Spanish text of the Convention of 1884, nor, consequently, with the change of the boundary line established in 1852 on the maps of Messrs Salazar and Emory.

No. 3. Page 5. Not less curious is the simile brought forth by Mr Mills in his excessive zeal to defend the interests entrusted to him, which reads: "This very citation illustrates a progress slow and gradual about one-half the period, intermitted by sleep[a] and very unequal in degree of progress, when wakeful the mind being more or less receptive at different periods from childhood to old age, so also man is said to grow slowly and gradually to maturity in twenty-one years, though he has spasmodic periods of rapid as well as of slow growth and so with the Rio Bravo at Juarez; moving its bed and banks Southward slowly and gradually by gradual erosion of the Mexican bank and deposit on the United States bank; fourteen hundred meters in forty-three years from 1852 to 1895, an annual advance of thirty-two meters."—A phenomenum [phenomenon], never seen, to be sure, would have been [occurred] if those "spasmodice periods of rapid as well as of slow growth as occur with the river Bravo at Juarez" had occurred, specially *when the river is not entirely dry.* The simile used by the Commissioner for the United States could only be pertinent, by proving that the growth of the human body takes only place during wakefulness and is interrupted during sleep, which is as impossible as the corrosion that the violent Rio Bravo when dry might cause on its banks.—Besides this "annual advance of thirty-two meters" is pure sophistry, as during more than twelve years consecutively from 1852 to 1864 the river did not change, or changed imperceptibly according to the declaration of witnesses.

No. 4 Page 6.—Great astonishment is caused on [to] Mr Mills by the setting down of the Mexican Commissioner in his conclusions the following affirmation taken textually from Page 9 of the report rendered by the Joint Commission to their respective Governments and [which] has been already printed "the changes of the channel of the river are due to true avulsions"; adding that in this the Mexican Commissioner is seriously mistaken, without

[a] [See opinion of the United States Commissioner, p. 200, supra.—Agent's note.]

taking into account that the words above cited were put down and signed by Mr Mills himself—Here follows how the American Commissioner tries to explain the apparent contradiction existing between what he affirmed in January 1895 and what he now sustains in 1896 in the case of "El Chamizal; viz: "What the Commissioner for the United States said and can be loyally understood through the complete text of the report, is that the avulsive changes in the upper part of the river were true avulsions as was subsequently proven by the decision in the case of "Isla de San Elizario" in contradistinction with the changes of the "bancos" in the lower part of the river. It did not refer to the slow and gradual changes through erosion and deposit."[a]—It is evident that the American Commissioner did not refer, nor could he have referred to the slow and gradual changes through *corrosion* (he says *erosion*) since they do not exist nor has he ever been able to prove that they existed in the section of the Rio Bravo between El Paso and Presidio del Norte. Which fact shows still more the contradiction incurred in by Mr Mills [in which Mr Mills is involved].

No. 5. Page 12—From Page 6[b] to the commencement of Page 12, the American Commissioner enters into lengthy and detailed considerations as to the examination [study] made by the Joint Commission of the "bancos" that are formed in the third section of the Bravo, between Rio Grande City and the Gulf of Mexico and pretends to relate them with the entirely different case of "El Chamizal." First of all it is proper to say that the American Commissioner committed a serious error that it behooves the Mexican Commissioner to correct at once for the better understanding of the point whenever the respective Governments obtain cognizance of same.—The American Commissioner, namely, without any authorization from the Mexican Commissioner wrote and published in Washington some probable decisions regarding the "bancos" of Camargo, Grangeno, Vela and Santa Margarita.

In those decisions, the American Commissioner enters into considerations and hypotheses more or less venturesome with which the Mexican Commissioner does not and could not agree, and to which he has not given other importance than that of a private [personal] opinion of Colonel Mills that ought to have been discussed at the proper time—Proof of this is that the Mexican Commissioner not only has (he) not assented in making (it) his own the

[a] [See opinion of United States Commissioner, supra, p. 201.—Agent's note.]

[b] [See supra pp. 202-206.—Agent's note.]

venturesome opinion of Mr Mills in regard to those probable and extemporaneous decisions; but has neither signed nor even reported them to his Government,[a] not considering them of any official importance which they, in fact, do not have. Nevertheless, in order that the American Commissioner should not suppose even for a moment that the Mexican Commissioner repudiates those hypothetical and extemporaneous decisions of Col. Mills in so far as they might serve as proof against the interests of the Government of Mexico in the case of "El Chamizal" he will suppose, for the nonce, but without admitting, that they represent the opinion of both the Commissioners; yea, that having been approved by their respective Governments they should possess legal force: what could be logically deducted therefrom?: what consequences could there be inferred from two cases that are distinct and different?: what does Mr Mills pretend to prove through the changes that the Rio Bravo operates in the section denominated by the Commissioners "from Rio Grande City to the Gulf" which comprises 108 miles in a direct line and 241 following the course of the river that runs through lands of alluvial soil where the earth has little consistency and with such slight fall (mark; slight fall) that the channel of the river is ever changing from right to left and (this incessant change must not be forgotten) corroding the concave bank and making deposits on the convex bank, at low as well as at high water,—i. e: at all times, all the year, incessantly—although of course the changes are much greater during high water. Assuredly by the American Commissioner is no nearer the right in this argument of parity (that tries to compare the changes of the river brought about by the formation of "bancos" in the lower part of Rio Grande City downwards with those effected at "El Chamizal," or be it up-stream) than in the one adduced before with so little pertinency in regard to the changes of the Missouri. In good logic two things that are alike unto a third one, are equal one with the other; but never can an argument of parity be based on two things that are alike in order to prove their identity with a third one. The Bravo, above, specially at lands of "El Chamizal" is a season-river that only operates its changes, always violently—see the unanimous declarations of the witnesses—at times of inundations and high

[a] [The "Probable Decisions" were forwarded by the United States Commissioner to the Department of State in his letter of September 25, 1895 (infra, p. 1101), and were transmitted by the Department of State to the Mexican Minister at Washington in Mr. Olney's note of December 5th, 1895 (infra, p. 912), and acknowledged by Mr. Romero in his note of the same date (infra, p. 913).—Agent's note.]

water [crecientes]; a river that has never been navigable and that during the dry seasons ceases to flow and whose bed becomes entirely dry save at detached pools—textual words of Major Ernst. Consequently: the changes effected by the river at its upper part can not and must not be compared with those effected at its lower part, nor with those occurring on the Missouri: Thence it follows that the argument of parity broached by the American Commissioner is irritant and of no value.

No. 6. Page 13—The American Commissioner incurs [makes] another important error—He says: "On page 8 of his compendium he states the fact that the banks are highest next the river is inexplicable with gradual erosion." Vernon-Harcourt in his "Rivers and Canals" (Vol 1 Page 11) says that in permeable strata the valleys on silt-bearing rivers are highest near the banks by reason of deposits produced in flood time, and this is a well known fact to all hydraulic engineers.—Such assertion of Mr Mills is not correct, as the Mexican Commissioner did not refer to the banks, but to all of the disputed land—See Page 8 of his [compendium] conclusions—that has a constant difference in level between the place it occupied in 1852 and the one it now has in 1856, which certainly would not have occurred if the river had changed slowly and gradually from one place to the other.—That the banks of the rivers are higher than the land of the valley is a truth so evident that it can be admitted, without recurring to Vernon-Harcourt's authority; but that all of the land where a river has changed, step by step, slowly and gradually is not level and presents the curves of level marked on the map of Mr Zayas would be inexplicable if the opinion of Mr Mills should be accepted even for a moment.

No. 7. Page 13—The Commissioner for the United States affirms magisterially: "No testimony has been presented proving the river to have ever run dry in winter." What more testimony does Mr Mills want than that of Major O H Ernst, a testimony invoked by the very American Commissioner himself who used the following words, textually, in English: "At the lowest stage the water ceases to flow and except in detached pools the bed becomes entirely dry."?[a]

No. 8. Page 13—Here comes another gratuitous and categorical asseveration on the part of Mr Mills against the Mexican Commissioner: "On Page 8, the Mexican Commissioner again

[a] [It will be observed that Major Ernst does not say that the river runs dry *in winter*. See his opinion printed in full, pp. 759–769, infra.—Agent's note.]

states in quotation, as though quoting from a witness—"destroys dams, tears off in a few minutes parcels of land of even more than 50 yards.—There is no evidence to sustain such a statement."—Mr Mills says that there is nothing to sustain such a statement; but, if he takes the trouble to go over the journal of April 14th and read the testimony of Mr Ynocente Ochoa he will find these words: "the largest change took place in 1864 when the Dam was destroyed"; and besides the journal of April 20th comprising the testimony of Mr Provencio who states that the river "carried away pieces of earth one yard, two yards and constantly in intervals of a few minutes.[a] Therefore, not many minutes were required to have fifty or more yards swept away by the river.

No. 9. Page 14. So many are the unproven asseverations of the American Commissioner, that the following one will not be found strange; but which, however, it is important to rectify: viz: "The syllogism of the Mexican Commissioner must be rejected, not only because its minor proposition is not proven, but because it is abundantly disproven by every witness who testified in the case save Serna."—Let us review the minor proposition of the syllogism promised by the Mexican Commissioner: "In fact, the change of the river in the case denominated "El Chamizal was not slow and gradual; but, on the contrary, violent and at periods of unequal intermissions."—What, then, was there to be proven by means of the testimony of witnesses?—That the change never occurred through slow and gradual corrosion; but, on the contrary, that it was excessively violent and unequal.

Let us now see if, as affirmed by the American Commissioner, that last fact is abundantly disproven by all the witnesses, save Serna. The first witness was said Serna and therefore has not to be mentioned. The second witness, Mr. Ynocente Ochoa said: "The most important one took place in 1864, when it destroyed the dam." "The greatest change that occurred was violent." The third witness, Mr. E. Trovencio testified: "The first remarkable change of the river occurred about the year 1864;" "at times, up to fifty yards were torn off at certain points during a day" "this work of destruction was effected during the great floods." The fourth witness, Mr. Y. M. Flores affirmed that "between 1864 and 1868 the current came with such violence that it destroyed

[a] [It will be observed the witness speaks of "one yard, two yards" as being carried away in a few minutes, not "fifty yards." See his testimony in record, supra, p. 135.—Agent's note.]

houses and fields." The fifth witness, Mr. S. Schutz, said: "The currents that came down between 1864 and 1864 were so impetuous that they destroyed houses and cultivated fields."—The sixth witness, Mr Y. Magoffin, declared "this damage caused by the river destroying the mexican banks."—The seventh and last witness, Doctor M. Samaniego said: "In 1864 the current was so strong that it destroyed the jetties constructed on the mexican bank of the river."—The absolute negations of Mr Mills compel the Mexican Commissioner to be perhaps too prolix and to review again what he believed to have already demonstrated; but let good faith and loyalty answer if there can be any greater unanimity in the testimony of the seven witnesses that were examined to prove that the change referred to was not due to a slow and gradual corrosion but to the force and violence of the current? The truth of the minor proposition of the syllogism formulated by the Mexican Commissioner is, therefore, proven beyond any doubt.

No. 10. Page 14.—The reproach contained in the following words of the Commissioner of the United States that read: "The Mexican Commissioner in his review of the case Nebraska versus Iowa in the Supreme Court of the United States has quoted copiously from the decision itself and the numerous authorities referred to in so far as he thinks supports his case but he does not give that part of the decision which clearly and forcibly decides that the change there was not only gradual, but imperceptible," does not require answer other than the following: The copious citations which the Mexican Commissioner made from the decision of the Supreme Court of Justice had no other view than to extract precepts and legal doctrines that could not be controverted by the American Commissioner; but the case in concrete and the decision rendered in same are not applicable to the question now being debated, as the conditions in which the Missouri river operates its changes are in no way similar to those that concurred to the violent and avulsive change of the Bravo at "El Chamizal."—As already said in Note No 5, in good logic it is not deducible that because two things are alike unto each other, they must be alike unto a third one. The changes of the Bravo at the section comprised between Rio Grande City and the Gulf, may be, or not, similar to those operated by the Missouri river; but it is not be deducted therefrom that they are similar to those in the case of the "El Chamizal."

No. 11. Page 17—Among the most futile arguments adduced to invalidate the syllogism of Mexican Commissioner, who uses

mostly in his premises the words that were employed in the Treaty, the following argument undoubtedly carries the palm: "All the witnesses, save Serna, in the Chamizal case, testified that the deposits in the Rio Grande were imperceptible, while the erosions were perceptible, as they were in the Missouri. And not one of them testified that it remained dry for nearly half the year."—Those imperceptible deposits that might be of importance if effected during the whole year and under the same conditions as in the Missouri, have no force whatever as to the "El Chamizal" case.—Whether the witnesses testified that such imperceptible deposits did occur, or whether it be admitted without further proof that they did take place—what follows thence?—If the change of the river was not effected there through slow and gradual corrosion, as has been superabundantly proven, but through excessively violent and unequal erosions, those deposits must not be considered; because the terms of Article I of the Convention of 1884 leaves no room for any doubt, in that respect. Said Article says: "The boundary line shall always be the one fixed by said Treaty and shall follow the normal center of said rivers regardless of the alterations [a] (changes) at the banks or of the course of those rivers, provided such alterations were effected through natural causes such as the slow and gradual corrosion and deposit of alluvium, and not by the abandonment of the existing channel of the river, and the opening of a new one."

So that, in order to bring about a modification of the boundary line, through alterations, it is an indispensable requisite that such alterations be effected through corrosion "slow and gradual AND deposit of alluvium" and not "OR deposit of alluvium" i e: that the deposit of alluvium when not accompanied by slow and gradual corrosion, but by violent erosion, as in the case of "El Chamizal", shall not alter the boundary line of 1852.—As to the other point: Says the Commissioner for the United States that not one of the witnesses testified that the river "remained dry during half a year".—That, is true. If no one witness testified to such a thing, it is because no question whatever was put to them in that regard; and here it is proper to make a most important rectification—The purport of the Mexican Commissioner during the interrogatories was to prove this very important fact: that in the case of "El Chamizal" the slow and gradual corrosion could not have been possible; and, to attain

[a] [Parentheses in original translation.—Agent's note.]

that end, the best way was to prove that the river only suffered changes, and very violent ones, during the floods; and that, during half the year, or thereabouts, the water was so low, as to not be able to occasion any corrosion whatever and even dried up completely.—The Mexican Commissioner thought that the report alone of Major O. H Ernst, which report was offered by the Commissioner for the United States as proof of expert—see journal of May 7th—Mr Mills would admit as proven [proving] that during the dry season the water ceases to flow and that the bed of the river dries up completely except at detached pools, as affirmed literally by said Mr Ernst.—The Mexican Commission took, besides, the precaution to cause the following to be entered in the journal: "The Mexican Commissioner stated thereupon that he had no other witnesses to present in this case, in behalf of Mexico; he wished to have it of record that the river did not change in winter.—To which the Commissioner for the United States replied that although he could not say that for certain that it had never changed in winter, it is true he has neither known or heard it said that any changes had ever been effected at said season, because for the reason that floods occur very seldom—if they occur—during the winter months." If, therefore, the very expert-witness presented by the U. S. Commissioner affirms, on the one hand, that the river becomes entirely dry at certain times; while, on the other hand, Mr Mills asseverates that he has never known or heard it said that changes occurred during winter, what necessity was there to take special testimony on that point?—If, however, the American Commissioner wishes to re-enter into proof as to that point, the overwhelming testimony of hundreds of persons would dispel even the shade of any doubt.

Finally, the Commissioner of theUnited States, for the want of any better arguments takes recourse to sorrowful lamentations of the to him disastrous consequences that would follow the correct application of the Convention of 1884 such as [is] demanded, in justice, by the Mexican Commissioners. (See Pages 19 to 20 of Mr Mill's reply).[a]—Even hypothetically admitting that all those lamentable consequences be due to the correct interpretation and application of Articles I and II of the Treaty of 1884, the Joint Commission is not, for certain, the one who has authority to

[a] [Parentheses in original translation. See supra, pp. 211–212, agent's notes.]

reform the same.—Judges have only the mission to apply the law, however hard the consequences that may follow.—

Dura lex sed lex.—

No. 12.—Page 21—The conclusions with which the Commissioner for the United States terminates his reply are:

——— First.—"Vattel says in Book, I Cha. 22, Sec 268: In case of doubt, every territory terminating on a river is presumed to have no other boundary than the river itself; because nothing is more natural than to take a river for a boundary, when a settlement is made; and wherever there is a doubt, that is always to be presumed which is most natural and most probable."—This doctrine is certainly applicable where no treaties or international compacts exist.—When these exist, they are the supreme law of Nations. The Convention of 1884 entered into between Mexico and the United States defines which is the dividing line between the two Nations as also the manner and conditions by which that line might be changed. The case, therefore, is not one of a doubtful character, but one to be passed upon by a clear and righteous interpretation of a Treaty.

Second.—"For 42 years from 1852 to 1894 Mexico rested on her rights, if she had any, by not only failing to set up any claim to the land now in dispute, but by assenting to the jurisdiction of the United States over it."—The Mexican Commissioner calls seriously the attention of the American Commissioner to that the International Boundary Commission has no authority to consider and much less decide upon the loss of rights of Mexico, by prescription, which let there be said by the bye, do not partake of any of the characters demanded by the laws of any country to make them productive of effect and are not pertinent, as far as this case is concerned.

"Third.—Mexico being the complainant it rests with her to prove the change avulsive and wrought by the "cutting of a new channel and abandonment of the old one" and it is not for her to say that the change was not gradual uniform and intermittent [?] hence, no matter how it otherwise changed, the change must be avulsive and the old boundary maintained without further proof, for one of the "any other changes" implied in the major premise of the Mexican Commissioner's syllogism and which must be alleged and proven, might be wrought by artificial means such as jetties, piers or obstructions, or dredging etc which are strictly prohibited in Article III of the Treaty of 1884." In Note No. I the attention has been already called to the extreme care exercised

by the American Commissioner, whenever citing Art II of the Convention of 1884, to suppress these words "any other change occasioned by the force of the current" (See Pages 19 and 21)[a] and here it is convenient to explain that the object thereof is none other than to slip in a sophism the falsity of which can be easily shown through the following example:—Suppose us to have before us the following two articles of a law: Art. I.—Peculation is the theft of monies of the public Treasury committed by the one to whom its handling has been intrusted. Art II Any other theft committed by private parties either in introducing goods of commerce, against the fiscal laws, is not peculation. What would Mr Mills say if giving to an example a greater extension and value than the one embodied in Article II, the absurd deduction should be made that *only contraband* is not peculation.

Such, precisely, is the sophism incurred in by the American Commissioner in pretending that *only* the example mentioned in Article II of the Convention should serve as a general precept. Besides, the requisite that prepossesses so much his mind "that the currents should have opened a new channel and the river abandoned the old one" is fully proven by this sole fact: *The channel now occupied by the river at El Chamizal is not the one it had in 1852*, as so clearly results from the map of level curves drawn by Mr Zayas.

In vain are, therefore, the efforts made by the U S Commissioner to break from this iron circle: Either the change was through *slow and gradual corrosion*, or it was not wrought in that manner—If the first, the dividing line must remain at the place now occupied by the river; if the second, it must be reestablished at the one it had in 1852, regardless of the lamentable consequences that impress themselves so much on Mr Mills but which, do not serve to invalidate a iota the logic force of this dilemma. The Mexican Commission has proven fully the fact, as clearly as the light of day, that the change was not due to slow and gradual corrosion, but, instead, very rapid between the years 1864 and 1868, extremely violent, destroying houses, trees, cultivated fields and not gradual; there having occurred no change, or, if at all, an imperceptible one, from 1852 to 1864, say in 12 years, and the great remarkable one which was sufficient, alone, to operate the change of the river-bed took place on the four following years, and—mark this—only during the time of floods—And now the Mexican [redacted]ioner asks—where in any of the 22 pages containing the

[a] [Parentheses in original translation.—Agent's note.]

reply of Mr Mills is there a single proof, a solitary positive fact, well proven, that the change of which we treat was *slow and gradual?*

The answer can be easily given by any one who reads the foregoing with a clear and impartial mind.

[Inclosure.]

"B"

Department of State
International (Water) Boundary Commission.
United States and Mexico.
Treaties of 1884 and 1889.

EL PASO, TEXAS, *August 1st, 1896.*

(Copy.)

To Señor Don F. JAVIER OSORNO,
Commissioner for Mexico,
International Boundary Commission,
C. Juárez, Mexico.

MY DEAR MR. OSORNO: In reply to your application to reopen the Chamizal Case No. 4, after due consideration of the subject and a careful examination of our proceedings in the joint journals of July 10th and 17th, I find in the former, page 4, the following:—

"The United States Commissioner here stated that as the Chamizal Case, No. 4, now appeared to be finally closed as to investigations of every name and nature, and as it was apparent from verbal discussions that the Commissioners would not be able to agree, and that as Mexico was the complainant, he had to request that the Mexican Commissioner present his reasons clearly and distinctly for non-agreement and that he would reply in like manner to the end that those who may have further consideration of this long, and so far, fruitless investigation may fully understand and take advantage, to the full extent, of our respective labors and conclusions."

And in the latter, page 22, the following:—

"The United States Commissioner having concluded his reply to the compendium of the Mexican Commissioner and the two Commissioners being still unable to reach an agreement, it was decided to conclude the further consideration of the case known as "El Chamizal" No. 4, each Commissioner to report the disagreement to his government with full copy of all the proceedings in the case."

From which it clearly appears that both as to evidence and argument, the case has been formally and finally closed as between the Commissioners and I must consider it inconsistent with the good order of business proceedings to reopen a case after the same has been disposed of, so far as the Commission is concerned, and I do not think my government would look favorably on such a course in deviating from agreements duly made and signed according to Articles II and IV of our regulations.

Considering the earnest desire of my government for a closing of the case at the earliest possible moment, I shall forward the proceedings as soon as possible, considering the duties of the Joint Commission with it duly terminated.

I have the honor to be, Sir,

Very respectfully your obedient servant,

ANSON MILLS
Colonel 3rd Cavalry, U. S. A.,
Commissioner.

"C."

(Copy Translation.)

CIUDAD JUAREZ, *August 2nd, 1896.*

Colonel ANSON MILLS,
United States Commissioner,
International Boundary Commission,
El Paso, Texas.

MUCH ESTEEMED COLONEL: As there is nothing more to be presented on my part to the Commission, I wish that if agreeable to you, we hold a meeting tomorrow at 9 A. M., at your office.

1st. To pass upon and terminate definitely the "El Chamizal" Case.

2nd. To agree upon the form in which the joint decision upon the case of the Island is to be drawn up.

Which the above will, I hope, terminate our mission as regards those two cases.

I am, Your obedient servant,

F. JAVIER OSORNO.

[Inclosure.]

"D"

(Journal—Incomplete.)

EL PASO, TEXAS, *August 4th, 1896.*

The Joint Commission met at the office of the United States Commissioner at 9 A. M., taking up the Island of San Elizario Case No. 10.

To avoid expense and delay the two Commissioners then agreed to accept the testimony of Martiniano Valverde and Juan Pablo Alvillar, taken before Mr. Felipe Seijas, District Judge at Juarez, Mexico.

Mr. Valverde on September 8th, 1894, testified as follows: "The river prior to the year 1857 used to run on the Southern channel which is now dry; that during said year, more or less on account of a very strong freshet, the river broke in and carried away a certain dike that the Americans had built to prevent the river from changing its course, thus leaving the Southern channel from the one day to the other as dry as it is now and took its course on the North channel, which is the present channel. That the river ever since then has been running on the North channel and that the Southern channel has had water in it only at the time when the farmers of Loma Colorado constructed the ditch to get water from the river to irrigate their farms with it, but that from the year 1873 to this date they have not built any ditches and no water has gone into the Southern channel. The same channel the river abandoned in a (brusque) abrupt manner in the year 1857 as aforesaid".

Mr. Alvillar on September 10th, 1894, testified as follows: "That many years before the year 1852 the river used to run then a good deal more towards the North than it now runs and that a distance of two leagues farther North could probably be estimated between the channel then and the present Northern channel now. And in the years that I have already mentioned, Ysleta, San Elizario and Socorro stood on the right bank, while at the present time they are on the left bank of said river. That some time past the river changed its course and took in and ran around the old channel, now dry, and kept running in this channel for some time, but from the year 1857 to 1858 the river changed its course again taking the present course; all of these changes being caused by the yearly freshets and risings of said river. That as

he has already stated, in the year 1858 the river abandoned the old channel and took the present one. That very little water ran in the old channel after that, and this water was the surplus water coming from a ditch that the farmers of Tres Jacales built to irrigate their lands, but that said ditch was abandoned eight or ten years ago and from that time the old channel has been perfectly dry".

The Joint Report of the two Consulting Engineers was then presented to the Joint Commission.

From the foregoing testimony and personal observation of the Commissioners and the report and maps of the Consulting Engineers, the Commission announce as their decision; that in the year 1852 the river ran near to where the present dry bed is marked on said maps above referred to, and continued to run in that locality with slight changes until about the year 1857 or 1858, when it abandoned its old channel and opened up a new one in the direction and vicinity of the present river as marked on said before-mentioned maps.

That according to Article 2 of the Treaty of 1884 the boundary remains in the old dry bed of the river as marked by the engineers upon the accompanying maps.

As instructed by the Commissioners, the engineers have marked at suitable distances in the old bed, now the boundary, points for permanent monuments to identify said international boundary, as will be observed by these maps, and they are numbered consecutively from the highest point on the present river to where the old river bed again joins it, from one to twenty-one inclusive. In order to prevent delay and facilitate the prompt action by either Commission, as soon as this decision shall have been confirmed by both governments, it is agreed by the Commissioners that each government shall erect separately, each alternate monument, the United States Commissioner beginning with No. 1, taking the odd numbers and that either Commission is authorized to proceed to erect their monuments as soon as practicable after it has been advised of the confirmation of this decision by both governments, said monuments to be similar to those placed on the international land boundary West of the Rio Grande, and to be erected as soon as practicable.

To which the Mexican Commissioner replied that he agreed with the decision but declined to sign it, not considering the Chamizal Case closed, and he desired to finish that before taking up the Island.

The United States Commissioner then stated that he was ready to proceed to business under the request of the Mexican Commissioner of August 2nd, and asked what was his pleasure.

To which the Mexican Commissioner declined to make response and announced that the meeting was dissolved.

The Joint Commission having failed to determine the Island of San Elizario Case, No. 10, and being still in session, the United States Commissioner stated that he had received advice from the Department of State, that his requisition for Ten Thousand Dollars (10,000) intended to be used in the investigations regarding the dam and distribution of the waters of the Rio Grande, had failed to pass Congress. That this was a surprise to him as he understood it was to the Department. That he now had but Three Thousand Four Hundred Dollars (3,400) at his disposal and that he had been instructed to abandon any further boundary work until Congress shall have appropriated moneys for its continuance, which he had been advised by the Department, would be requested at the next Session.

He requested therefore, an adjournment of the Boundary Commission sine die, or until such time as the United States Commissioner shall have been informed by his government that funds have been appropriated for the work, but not earlier than the first of February next, so that the dam and water distribution investigation may not be interfered with.

To which the Mexican Commissioner declined to give official knowledge until the consideration of the Chamizal Case.

To which the United States Commissioner replied that the Chamizal Case had been formally closed over the signatures of both Commissioners, and the Mexican Commissioner was advised by letter on August 1st, in which the United States Commissioner declined to re-open it.

The Joint Commission being still in session, the United States Commissioner stated that he had been instructed to use all the moneys now at his disposal in the dam and water distribution investigation, making them go as far as possible, and to that end, he now requests the Mexican Commissioner to name a day, giving sufficient time to procure the presence of both Engineers, Derby and Ibarrola, for organization of the new Commission and the laying out of a program for the entire work, that the investigation may be begun as soon as practicable, and the United States Commissioner be given an opportunity to get as great results from the small amount of funds now in his possession as possible.

To which the Mexican Commissioner replied that he declined to give any official knowledge of this matter, until the consideration of the Chamizal case shall be completed.

ANSON MILLS
JOHN A. HAPPER

[Inclosure.]

"E"

EL PASO, TEXAS, *August 4th, 1896.*

To Señor DON F. JAVIER OSORNO, *Commissioner for Mexico, International (Water) Boundary Commission, El Paso, Texas.*

MY DEAR MR. OSORNO: In reply to your letter of this date, I beg to state that on your representation that you had some papers to present (three or four pages as expressed by your Secretary) I directed my translator, Mr. Witte, to translate them at the earliest practicable moment at my expense.

He presented the last part on Saturday, August 1st, at 11-30 A. M., through Mr. Longorio.

I consider them as belonging to the United States Commission and shall forward them informally to the State Department for whatever they may be worth and respectfully decline to furnish them to you.

I have the honor to be sir,

Very respectfully your obedient servant,

ANSON MILLS,
Colonel 3rd Cavalry, U. S. A., Commissioner.

[Inclosure.]

"F"

EL PASO, TEXAS, *June 25th, 1896.*

The Joint Commission met at the office of the United States Commissioner at 10 A. M., pursuant to the adjournment of yesterday, and informally discussed the Island of San Elizario Case, No. 10, arriving at an informal decision, and adjourned until such time as the Consulting Engineers shall sign a joint or separate report.

ANSON MILLS,
JOHN A. HAPPER.

F. JAVIER OSORNO,
S. F. MAILLEFERT.

Colonel Mills to Mr. Olney.

El Paso Texas Aug 11, 1896. Received 3.55 P M.

SECRETARY OF STATE *Washington, D. C.*

Mexican Commissioner has receded from his position explained in my letter of 8th, and has signed all proceedings substantially as agreed to in incomplete Journal of fourth instant.[a]

ANSON MILLS,
Commissioner.

Mr. Rockhill to Colonel Mills.

DEPARTMENT OF STATE,
WASHINGTON, *August 15, 1896.*

Colonel ANSON MILLS, U. S. A.,
Commissioner, United States-Mexico International (Water) Boundary Commission, El Paso, Texas.

SIR: I have to acknowledge the receipt of your two letters of the 4th and 8th and telegram of the 11th instant—all having reference to the Chamizal Case, No. 4, in regard to which the Commissioners of the United States and Mexico have been unable to reach an agreement.

Your action in refusing to reopen the case unless for the purpose of reaching an accord is approved. The Department's understanding from a perusal of your two letters is that your contention is the correct and true one, both under international law and treaty obligations. Its only regret is that an amicable and satisfactory termination of the incident could not have been reported.

I am, sir, your obedient servant,

W. W. ROCKHILL,
Acting Secretary.

---

[a] [See Joint Journal of August 10, 1896, Proceedings of International Boundary Commission, p. 103.—Agent's note.]

DIPLOMATIC CORRESPONDENCE BETWEEN THE UNITED STATES AND MEXICO

DIPLOMATIC CORRESPONDENCE HAVING DIRECT REFERENCE TO CHAMIZAL CASE NO. 4.

CORRESPONDENCE RELATING TO THE GENERAL QUESTION OF INTERNATIONAL TITLE TO THE CHAMIZAL TRACT AND THE NEGOTIATIONS FOR THE SETTLEMENT THEREOF.

Mr. Sherman to Mr. Clayton.

No. 242. DEPARTMENT OF STATE,
WASHINGTON, *December 22, 1897.*

POWELL CLAYTON, Esquire,
etc. etc.

SIR:

I enclose herewith a copy of a letter from General Anson Mills, of the International (Water) Boundary Commission, dated the 4th instant, transmitting a copy of the journal of the Commission for that date, and reporting that the two Commissioners join in suggesting to their respective Governments that a third Commissioner, not a citizen of either the United States or Mexico, be appointed to meet the present Commissioners, and hear from them both sides of the question at issue in Case No. 4, El Chamizal, and act as arbitrator of the points on which they are unable to agree.

You will propose to the Mexican Government the addition of a third Commissioner for the sole purpose of determining the Chamizal Case (which now greatly obstructs the work of the Commission), without prejudice to the question of eliminating the bancos. The question of eliminating the bancos can be considered after the preliminary sketch to the river-mouth shall have been completed.

Respectfully yours, JOHN SHERMAN.

Enclosure as above.

[Inclosure.]

General Mills to Mr. Sherman.

LAREDO, TEXAS, *December 4, 1897.*

To the Honorable, the SECRETARY OF STATE,

Washington, D. C.

SIR: I have the honor to enclose herewith the journal of the Joint Commission of the 4th instant.

The Commissioners having started their engineers on the extensive survey of the lower Rio Grande, from Rio Grande City to the Gulf, as agreed upon by both governments, and having completed the consideration of every case referred to them that it was practicable to take up and consider intelligently and definitely, adjourned until the engineers shall have completed the work upon which they are now engaged; the engineers to inform their Commissioners when near completion, and the date that they will be able to present their maps and reports to the Joint Commission.

The work still before the Commission, which they are unable to intelligently and definitely consider is described as follows:

Eight banco cases, namely: No. 1, Banco de Vela, No. 2, Banco de Camargo, No. 6, Banco de Granjeno, No. 8, Banco de Santa Margarita, No. 14, Banco de los Benavides, No. 15, Bancos E Chiquihuite and La Canasta, No. 16, New Banco de Carmago, and No. 17, 'Morteritos'. The consideration of these bancos will be taken up as soon as the two governments shall arrive at a decision as to their elimination or non-elimination from the operations of existing treaties.

The three bridges across the river between El Paso and Ciudad Juarez are yet unmarked, the Mexican Commissioner declining under instructions from his government to give them consideration until the Chamizal Case, No. 4, on which the Commissioners were unable to agree, shall have been finally determined, as all three of these bridges are wholly upon land claimed by Mexico. The consideration of these bridges will be taken up as soon as Case No. 4, El Chamizal, shall be determined. In its present status however (the two Commissioners having exhausted all arguments to induce an agreement), it is powerless to determine that case.

As stated in my letter transmitting this case, August 4, 1896, on page 3, it is perhaps the most important case submitted for our consideration and presented great provocation to the citizens of both countries for violence and disorder, where so many small [illegible]*ts of* land are claimed by citizens of both nations.

For this reason and for the further reason that the unsettled state of this case not only embarrasses the demarcation of the bridges, but is liable to embarrass other international questions arising here, the two Commissioners have felt it their duty to join in the journal, in suggesting to their respective governments that a third Commissioner not a citizen of either the United States or Mexico be appointed to meet the two present Commissioners and hear from them both sides of the question at issue and act as arbiter wherein they are unable to agree.

I sincerely hope that your Department will find itself authorized under Joint Resolution passed April 29, 1890, and able and willing to grant this request, in which case I am quite sure the Commission will be able to arrive at an early judgment in the case, which, while perhaps not entirely satisfactory to either of the present Commissioners, will be to the common interests of the two countries interested.

If this request should be granted, at an early date, the Commissioners can be occupied in considering this case while the engineers are engaged on the survey of the river below.

I have the honor to be,

Very respectfully your obedient servant,

ANSON MILLS,
Brigadier General U. S. Army (Retired),
Commissioner.

[Sub-inclosure 1.]

[Joint Journal.]

LAREDO, TEXAS, *December 4, 1897.*

The Joint Commission met at the Hotel Hamilton at 10 A. M., when the Commissioners, after discussion and mutual regrets regarding their inability to arrive at a decision in the case No. 4, known as El Chamizal, the only case so far referred to them in which they have been unable to agree, the fact that it was presented to the Joint Commission November, 1895, and still remains undecided, much to the injury and disquietude of the population of the cities of Ciudad Juarez, Chihuahua, and El Paso, Texas, and the further fact that this failure to agree and finally determine the case has prevented the demarcation of the three bridges already constructed and will—until definitely settled—prevent the demarcation on the additional bridge now under construction, and the still further fact that the unsettled condition of this case impeded an agreement on the cut-off case at El Paso, No. 13, now happily

agreed upon, and will continue to interfere with other cases that are likely to occur in that vicinity; the Commissioners have deemed it their duty to jointly suggest in this journal to their respective governments, that in accordance with the spirit of Article 21 of the Treaty of Guadalupe Hidalgo, signed February 2, 1848, that the two governments agree upon and appoint a third Commissioner, not a citizen of either the United States or Mexico, to meet the two present Commissioners, and hear from them both sides of the question at issue, and act as arbiter wherein the present Commissioners are unable to agree.

As there is no other case before the Joint Commission, and there being no further necessity for the presence of the Commissioners with the field party, pending the survey, they thereupon adjourned, until May 30th next, or such earlier date as the engineers shall advise them of the completion of the survey, to then meet at a point to be agreed upon by them most convenient for the business in hand, pending which time, the Commissioners will repair to their respective capitals where it will be more convenient and expedient for consultation with their respective Departments should such be required.

ANSON MILLS, F. JAVIER OSORNO,
JOHN A. HAPPER, S. F. MAILLEFERT.

[Sub-inclosure 2.]

[Spanish text.]

[Acta.]

LAREDO, TEXAS, *Deciembre 4 de 1897.*

La Comisión Mixta se reunió en el Hotel Hamilton á las 10 A. M., y los comisionados de spués de madura discusión, expresaron mutuamente que sentían mucho no haber podido llegar á una decisión en el Caso No. 4 conocido por El Chamizal, único de los que hasta ahora se les han encomendado, en que no han podido ponerse de acuerdo. Es de notarse que fué presentado á la Comisión Mixta en Noviembre de 1895, y aún está pendiente de resolución con perjuicio y zozobra de los habitantes de Ciudad Juárez, Chihuahua y El Paso, Texas. También hay que tener presente que la falta de acuerdo y fallo del caso, ha demorado la demarcación internacional de los tres puentes ya construidos y demorará indudablemente, mientras no esté definitivamente arreglado, la demarcación del nuevo puente en construcción. También debe mencionarse que la resolución indefinida de este caso ha impedido

llegar á un arreglo acerca del canal, en el Caso de "El Paso," No. 13, que, por fortuna, está ya resuelto, y que tal inconveniente continuará presentándose en cada caso que ocurra en esa región. Los comisionados creen do su deber consultar á sus respectivos Gobiernos, por medio de esta acta, que de acuerdo con el espíritu del artículo XXI del Tratado de Guadalupe Hidalgo, firmado en 2 de Febrero de 1848, ambos Gobiernos estén de acuerdo en nombrar un tercer comisionado que no sea ciudadano ni de los Estados-Unidos ni de Méjico, para que en relación con los dos actuales comisionados oiga á ambos partes en el asunto de que se trata y decida como árbitro en el punto que no han podido ponerse de acuerdo los presentes comisionados.

Como quiera que no existe ningún otro caso sometido á la Comisión Mixta, y por no haber necesidad alguna que requiera la presencia de los comisionados en los trabajos de campo durante la topografía que va á hacerse, la Comisión Mixta aplazó sus juntas para el 30 de Mayo próximo ó antes si los ingenieros avisan haber terminado su levantamiento topográfico, y entonces se reunirá en el punto que fije de común acuerdo y sea el más conveniente para tratar los asuntos que se le sometan, y durante este tiempo los comisionados irán á sus respectivas Capitales en donde con más facilidad y eficacia podrán ser consultados por sus respectivos Gobiernos, si fuese necesario

Ln Comisión Mixta levantó sus sesiones.

F. JAVIER OSORNO, ANSON MILLS,
S. F. MAILLEFERT. JOHN A. HAPPER.

Mr. Clayton to Mr. Sherman.

No. 292. LEGATION OF THE UNITED STATES,
MEXICO, *February 15, 1898.*

To the Honorable JOHN SHERMAN,
Secretary of State, Washington, D. C.

SIR:

Replying to your instruction No. 242, of December 22, 1897, I have the honor to report that, upon the 30th of said month, in an interview with Mr. Mariscal, I brought the matter to his attention and after some discussion pro and con he agreed to recommend to his Government the acceptance of the proposition as stated in your instruction. On the same day I addressed a formal note to him, copy herewith enclosed, in which I referred to the recommendations of the International Boundary Commission concerning the

appointment of a third Commissioner, and my instructions relating thereto.

Having received no reply, on the 13th of January last, I again verbally called the matter to his attention and reminded him of the conclusions reached at our last interview. He informed me that, upon further reflection, he did not think, in view of the fact that the question involved national territory, that it ought to be submitted to any private individual. He took the position that if a third person was added to the commission the result of its action would have to be submitted to the two Governments for ratification and that the probabilities were we would be no nearer a settlement of the case than heretofore. He expressed his willingness to submit the case to the Chief Executive of a third nation, to be agreed upon. I raised the question of the probable delay of such an arbitration, referring to the fact that the two Governments were at great expense in keeping up this joint commission, and that it seemed to me desirable that their labors should be brought to an end as soon as possible. After some further discussion, as he seemed to adhere to his views, I requested him, in reply to my note of December 30th, to place his suggestions in writing, and I would submit them to the State Department, which he agreed to do.

Still receiving no reply, I called upon Mr. Mariscal upon the 12th instant, and again brought the matter to his attention. He informed me that a reply had already been framed and would be sent immediately. The same was received on the 14th instant, copy and translation enclosed, embodying his views as verbally expressed in the interview above referred to, and referring to article 21 of the treaty of February 2, 1848 as the basis of the proposed arbitration, and proposing as arbitrator any one of the Chiefs of the following named states: Chili, Columbia, Ecuador, the Swiss Confederation and Belgium. It will be observed that Article 21 of the treaty of February 2, 1848 looks not only to arbitration at the hands of a friendly nation, but also by commissioners appointed on each side.

I have the honor to be, Sir,

Yours obedient servant, POWELL CLAYTON.

Enclosures:

1. Mr. Clayton to Mr. Mariscal, Dec. 30, 1897.
2. Mr. Mariscal to Mr. Clayton, Feb. 11, 1898.
3. Translation of No. 2.

[Inclosure 1.]

Mr. Clayton to Señor Mariscal.

LEGATION OF THE UNITED STATES,
MEXICO, *December 30, 1897.*

His Excellency IGNACIO MARISCAL,
Minister for Foreign Affairs.

Mr. Minister:

Referring to our conversation of to-day relative to the inability of the International Boundary Commission to agree upon a settlement of Case No. 4, El Chamizal, and their recommendation that a third Commissioner be selected to act as arbitrator upon the points upon which they are unable to agree, I am instructed by my Government to propose to the Mexican Government the addition of a third Commissioner for the sole purpose of determining the Chamizal case without prejudice to the Question of eliminating the "bancos," which can be considered after the preliminary sketch to the river mouth shall have been completed.

Awaiting your reply to this proposition, I have the honor to renew to Your Excellency the assurances of my high consideration.

POWELL CLAYTON.

[Inclosure 2.]

Señor Mariscal to Mr. Clayton.

SECRETARÍA DE RELACIONES EXTERIORES,
MEXICO, *11 de Febrero de 1898.*

Á Su Excelencia POWELL CLAYTON,
Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidas de América.

Señor Ministro:

En nota fechada el 30 de Diciembre último, Vuestra Excelencia se sirvió proponer, por instrucciónes de su Gobierno, que se aumente la Comisión Internaciónal de límites entre Mexico y los Estados Unidos con un tercer Comisionado para resolver únicamente los puntos relativos al caso número 4 "El Chamizal", en los cuales no pudieron ponersedde acuerdo los actuales Comisionados.

En respuesta, tengo la honra de manifestar á Vuestra Excelencia que, en concepto del Gobierno, el nombramiento de un tercero entre los Comisionados que forman la Comisión Internacional, aun para el caso especial de que se trata, tendría varios inconvenientes,

siendo los principales, que tal nombramiento sería contrario á la Convención ajustada entre ambos países para el establecimiento y funciones de la Comisión, y á la cual tienen que ajustarse los dos Gobiernos; porque, según dicho tratado, la Comisión no tiene la facultad de decidir las cuestiones que se le someten, sino sólo emitir su dictamen, el cual necesita de la aprobación posterior expresa ó presunta de las dos Altas Partes Contratantes, para tener fuerza de sentencia; además, el tercer Comisionado no podría ser sino un individuo particular.

Por ser este caso, cuya resolución inapelable se busca, una controversia sostenida entre dos gobiernos de pueblos soberanos, y la materia de ella una fracción del territorio que el uno y el otro pretenden pertenecerles en virtud de su dominio eminente, dichos gobiernos sólo pueden dignamente someter la controversia á la decisión definitiva de un Jefe de Estado soberano.

En el caso presente, el Ejecutivo de los Estados Unidos Mexicanos y el de los Estados Unidos de América se fundarían para ajustar el arbitraje en la prevención del articulo XXI del tratado de paz y límites concluido en Guadalupe Hidalgo el 2 de Febrero de 1848.

En cumplimiento de este pacto internacional, por las consideraciónes expresadas, el Señor Presidente de la República ha acordado que por la Secretaría de mi cargo se proponga al Gobierno de los Estados Unidos de América, para árbitro en la cuestión del Chamizal, á cualquiera de los Jefes de Estado que siguen: Presidentes de las Repúblicas de Chile, de Columbia ó de El Ecuador; al Presidente de la Confederación Suiza, ó al Rey de los Belgas. Esta Secretaría hace formal propuesto de dichos Jefes de Estado; y si el Gobierno de los Estados Unidos acepta el nombramiento de alguno de ellos, desde luego firmaré con Vuestra Excelencia el protocolo correspondiente.

Renuevo á Vuestra Excelencia las protestas de mi muy distinguida consideración.

IGNO. MARISCAL.

[Inclosure 3.]

[Translation.]

DEPARTMENT OF FOREIGN RELATIONS,
MEXICO, *February 11, 1898.*

To His Excellency POWELL CLAYTON,
Envoy Extraordinary and Minister Plenipotentiary of the United States of America.

Mr. Minister:

In the Note dated the 30th of last December, Your Excellency was pleased to propose, in accordance with instructions from your Government, that the International Boundary Commission between Mexico and the United States be increased by one Commissioner, to resolve only the points relative to Case No. 4, "El Chamizal", in which the present Commissioners were unable to agree.

In reply I have the honor to inform Your Excellency that, in the opinion of this Government, the nomination of a third Commissioner among those who form the International Commission, even for the special case in question, there would be various objections, the principal ones being that such nomination would be contrary to the Convention entered into between both Countries for the establishment and the functions of the Commission, and by which the two Governments have to be regulated; because, according to said treaty, the Commission has not the faculty to decide the questions that are submitted to it, but only to emit its opinion, which necessitates the ultimate approval, expressed or presumed, of the two High Contracting Parties, in order to have the force of a decision; moreover, the third Commissioner could be nothing more than a private individual.

This case, for which an unappealable decision is looked for, being a controversy between two Sovereign Governments, and the subject matter of which a portion of the territory which one and the other pretends to own by virtue of its sovereignty, said Government can with propriety only submit the controversy for a definite decision to the Chief of a Sovereign State.

In the present case, the Executive of the United States of Mexico and that of the United States of America would take as a foundation for an adjustment of the arbitration the provisions of Article XXI of the Treaty of Peace and Boundaries concluded in Guadalupe Hidalgo the 2d of February, 1848.

In compliance with this international compact, for the reasons hereinbefore expressed, the President of the Republic has determined to propose to the Government of the United States of America, through the Department under my charge, as arbiter in the Chamizal question, any one of the Chiefs of the following-named States: The Presidents of the Republics of Chile, of Columbia or of Ecuador; the President of the Swiss Confederation, or the King of Belgium. This Department makes a formal proposal of said Chiefs of State, and if the Government of the United States accepts the nomination of any one of them, I will forthwith sign with Your Excellency the corresponding protocol.

I renew to Your Excellency the assurances of my very distinguished consideration.

IGNO. MARISCAL.

Mr. Sherman to Mr. Clayton.

No. 321. DEPARTMENT OF STATE,
WASHINGTON, *March 2, 1898.*

POWELL CLAYTON, Esquire,
etc. etc.

SIR:

I have to acknowledge the receipt of your despatch No. 292 of the 15th ultimo, with which you enclose copies of correspondence had with the Mexican Government in regard to the proposition made in my instruction No. 242 of December 22, 1897, that an additional commissioner be added to the existing Water Boundary Commission of the United States and Mexico for the purpose of determining the Chamizal case without prejudice to the further question of eliminating the bancos, which can be left for consideration after the preliminary sketch of the river from El Paso to its mouth shall have been completed.

I observe by Señor Mariscal's reply that, while accepting the proposition in principle, he appears to desire to give to this particular matter the status of an international arbitration by proposing that the third commissioner, whom he styles as arbitral in the Chamizal question, shall be the chief of a friendly government as, for example, the President of the Republic of Chile, of Colombia, or of Ecuador, the President of the Swiss Confederation, or the King of Belgium.

This counter-proposal gives to the matter an extension which was not at all contemplated in the original proposition of this government. My suggestion was, that the machinery for the

determination of the question already adequately existed in the Convention of March 1, 1889, whereby the joint commission composed of representatives of the two countries was to examine and determine all the questions which might arise in the ascertainment of the changes in the river bed which had occurred since the original fixation of the line by the Treaty of Guadaloupe Hidalgo, and the assignment of disputed territories to their respective jurisdictions. The Convention of 1889, was not an international treaty of arbitration, and could not be converted into such a treaty by the act of the Executive of the United States without a new convention to be submitted to the Senate for its advice and consent.

I am not prepared to recognize the necessity for so elaborate a proceeding at the present time. The question at issue, is not so much one of international right, or disputed interpretation of the original treaty of Guadaloupe Hidalgo, as it is the application to the matter of the ordinary rules and precedents of law with respect to changes in a fluctuating river boundary and their effect upon the arcifinous demarcations of the respective jurisdictions. The question being essentially judicial, and not involving the element of friendly compromise, which is so often apparent in the settlement of international disputes by a neutral arbitrator, I am still of the opinion, that it can find a just and satisfactory solution without resorting to a new treaty, or appealing to the kindly offices of a third state, and that the simplest and most practicable way to determine it, is to enlarge the commission by the appointment of an American or Mexican jurist upon whom the two governments may be able to agree.

In this manner the existing convention will be sufficient for the determination of the question.

Respectfully yours, JOHN SHERMAN.

Mr. Clayton to Mr. Sherman.

No. 336. LEGATION OF THE UNITED STATES,
MEXICO, *March 21, 1898.*

To the Honorable JOHN SHERMAN,
Secretary of State,
Washington, D. C.

SIR:

In obedience to your instruction No. 321, of the 2nd instant, regarding the proposed addition of a third commissioner to the International (Water) Boundary Commission, I have the honor to

report that, on the 10th instant, I addressed a note to Minister Mariscal, copy enclosed, embodying, to a great extent, your own language. I also had a personal interview with him upon the subject. I confess that I was at a loss to answer his objections as to the lack of authority for the appointment of a third commissioner, Article 2nd of the treaty of March 1, 1889 having provided for the number of commissioners and having made no provision for the adding thereto, except Secretaries and Interpreters.

I now have the honor to enclose copy and translation of a note from Mr. Mariscal, in which he sets forth, at considerable length, his objections to the plan proposed by you, and in support of his counter proposition.

Being satisfied that you have good and sufficient reasons, and have discovered authority where I have failed, for the appointment of a third commissioner, I shall not venture the suggestion that, under Article 21 of the Treaty of February 2, 1848, instead of the selection of a friendly nation, two commissioners might be selected to settle the whole controversy.

I have the honor to be, Sir,

Your obedient servant, POWELL CLAYTON.

Enclosures:

1. Mr. Clayton to Mr. Mariscal, March 10, 1898.
2. Mr. Mariscal to Mr. Clayton, March 16, 1898.
3. Translation of No. 2.

[Inclosure 1.]

Mr. Clayton to Señor Mariscal.

LEGATION OF THE UNITED STATES,
MEXICO, *March 10, 1898.*

His Excellency IGNACIO MARISCAL,
Minister of Foreign Affairs,

Mr. Minister:

Replying to Your Excellency's note of the 11th ultimo, in reply to my note of the 30th of last December, concerning the proposed addition of a third commissioner to the International Boundary Commission for the purpose of settling the Chamizal case, Your Excellency's note having been referred to the Secretary of State and considered by him, he directs me to inform you that your counter-proposal gives the matter an extension which was not at all contemplated in the original proposition of this Government. His suggestion was, "that the machinery for the determination of the question already adequately existed in the Convention of March

1, 1889, whereby the joint commission composed of representatives of the two countries was to examine and determine all the questions which might arise in the ascertainment of the changes in the river bed which had occurred since the original fixation of the line by the treaty of Guadalupe-Hidalgo and the assignment of disputed territories to their respective jurisdictions.

The Convention of 1889 was not an international treaty of arbitration and could not be converted into such a treaty by the act of the Executive of the United States without a new convention to be submitted to the Senate for its advice and consent." The Secretary of State is "not prepared to recognize the necessity for so elaborate a proceeding at the present time." He regards the question at issue as being "not so much one of international right or disputed interpretation of the original treaty of Guadalupe Hidalgo as it is the application to the matter of the ordinary rules and precedents of law with respect to changes in a fluctuating river boundary and their effect upon the arcifinous demarcations of the respective jurisdictions. The question being essentially judicial and not involving the element of friendly compromise which is so often apparent in the settlement of international disputes by a neutral arbitrator," he is " still of the opinion that it can find a just and satisfactory solution without resorting to a new treaty or appealing to the kindly offices of a third state, and that the simplest and most practicable way to determine it is to enlarge the commission by the appointment of an American or a Mexican jurist upon whom the two Governments may be able to agree." In this manner he believes "the existing convention will be sufficient for the determination of the question."

I have the honor to renew to Your Excellency the assurances of my high consideration.

POWELL CLAYTON.

[Inclosure 2.]

Señor Mariscal to Mr. Clayton.

SECRETARIA DE RELACIONES EXTERIORES.

MÉXICO, *Marzo 16, de 1898.*

Señor Ministro:

He tenido la honra de recibir la nota en que Vuestra Excelencia, con fecha 10 del corriente, se sirve comunicarme que, habiendo dado cuenta a su Gobierno de la nota que le dirigí el 11 de Febrero último relativa a la adición, propuesta por el mismo, de un Comisionado a la Comisión de limites internacionales con el fin

de resolver el caso del Chamizal, el Secretario de Estado insiste en su propuesta y considera que la mia, de que el caso se resuelva por una de los Gobiernos amigos que enumero, da al asunto una extensión que en lo absoluto no estaba prevista por aquel Gobierno, supuesto que el mecanismo propio para resolver la cuestión existe ya establecido por la Convención de 1° de Marzo de 1889, en virtud de la cual la Comisión mixta, compuesta de representantes de ambos paises, debia examinar y *determinar* (*determine*) todas las cuestiones que ocurrieran a consecuencia de cambios del rio efectuados después de la fijación de la linea divisoria en cumplimiento del tratado de Guadalupe Hidalgo.

Desde luego y a reserva de considerar otras razones alegadas por el Honorable Secretario de Estado, debo llamar la atención hacia una inexactitud de su apreciación relativa al alcance de la Comisión mixta establecida por la Convención del 1° de Marzo de 1889. El dictamen de los Comisionados no es decisivo, y lo que debe hacerse cuando desde un principio no se pongan de acuerdo respecto del punto que ocasiona la controversia (es decir, en casos como el que nos ocupa), está bien explicado al fin del articulo VIII de dicha Convención, el cual es como sigue: "Artículo VIII. Si ambos Comisionados estuvieren de acuerdo en una resolución, su fallo se considerará obligatorio para ambos Gobiernos, á no ser que alguno de ellos lo desaprobare dentro de un mes contado desde el dia en que se pronuncie. En este último caso, ambos Gobiernos se avocarán el conocimiento del asunto y lo decidirán amistosamente, en la forma que les pareciere justificada y conveniente, teniendo siempre presente la estipulación del articulo XXI del tratado de Guadalupe Hidalgo, del 2 de Febrero de 1848.

"Otro tanto sucederá cuando los Comisionados no se pongan de acuerdo respecto del punto que motiva la cuestión, queja ó cambio en cuyo caso cada Comisionado formulará un dictamen por escrito que presentará á su respectivo Gobierno."

De aqui se infiere que si se nombrase un tercer Comisionado como miembro de la Comisión mixta de que se trata, á más de que ese nombramiento seria contrario al articulo II de la citada Convención que establece solamente dos Comisionados, ese tercero no tendria facultad de resolver el caso, sino cuando más de dar un tercer dictamen sobre el asunto, supuesto que en ningún articulo de la misma Convención se encontraria establecida la obligación de los Gobiernos de someterse finalmente al juicio de esa persona. Si se dijere que tal obligación nacería del nuevo convenio de las

dos partes, entonces semejante estipulación constituiría una Convención enteramente nueva, que habria menester la revisión por el Senado de una y otra República, con todas las formalidades requeridas para un tratado internacional. Caeríamos precisamente entonces en el inconveniente que el Honorable Señor Sherman desea evitar en este caso; inconveniente al cual supone daría lugar mi proposición, siendo asi que su proyecto y no el mio es el que tendría que ocasionarlo.

Mi propuesta ha sido perfectamente ajustada á lo que dispone la Convención que debemos respetar, en el caso previsto por ella de que los Comisionados no se pongan de acuerdo respecto á la cuestión que se les someta. Lo que entonces debe hacerse, conforme al artículo que he copiado, se reduce á que los Gobiernos procuren por sí resolver el punto de una manera amistosa, " teniendo siempre presente la estipulación del artículo XXI del tratado de Guadalupe Hidalgo." Ahora bien, en ese artícula, que no es necesario transcribir integramente, lo que se estipula es que en cual quiera desacuerdo entre las dos naciones, no se ocurrirá nunca á represalias ni otros medios hostiles, sino que se tomará en consideración la conveniencia de terminar la dificultad por medio de " un arbitramento de comisarios nombrados por ambas partes, ó de una nación amiga. Y si tal modo (añade el articulo) fuere propuesto por una de las dos partes, la otra accederá á él, á no ser que lo juzgue absolutamente incompatible con la naturaleza y circunstancias del caso."

En vista, pues, de la Convención y el tratado á que me voy refiriendo, no se necesita de un nuevo tratado para estipular que la cuestión del Chamizal sea resuelta por algún Gobierno amigo, como yo lo he propuesto. Ya eso está previsto y estipulado previamente para todos los casos de desacuerdo entre los dos Gobiernos y con especialdad para las cuestiones á que se contrae la Convención de 1889, que recomienda se tenga presente el medio de un arbitramento. No seria éste el primer caso en que los dos Gobiernos apelaran á ese medio para terminar una cuestión entre ambos sin necesidad de nueva Convención para establecer el arbitraje, apoyándose únicamente en el articulo XXI del tratado de Guadalupe Hidalgo. La obligación de acceder en general á ese medio propuesto ahora por el Gobierno Mejicano, es clara conforme á ese artículo, no pudiendo alegarse que dicho medio sea "absolutamente incompatible con las circunstancias del caso."

La unica duda posible es si conviene que el arbitramento se encomiende á comisionados escogidos por ambas partes, ó á un

Gobierno amigo. La rázon que al hacer mi propuesto aduje para preferir lo segundo, fué que la cuestión del Chamizal no era emanada del interés de uno ó más individuos protegidos por su Gobierno, que es el caso más frecuente de estas controversias, sino del interés directo y jurisdiccional de una y otra nación; á saber, de una cuestion de limites internacionales; por lo cual no parecía conveniente ni propio que fuera resuelta por un individuo privado, aun cuando éste pareciera imparcial por no ser ciudadano ni de uno ni de otro pais, que fue lo propuesto primeramente por el Señor Secretario de Estado, á diferencia de lo que ahora propone, consistente en que se nombre un jurista Americano ó Mejicano. Aun siendo de una tercera nacionalidad, el jurista que se escoja no podrá tener el carácter de alta respetabilidad y prestigio correspondiente al Juez que va á fallar una cuestión en que se interesan, no indirectamente una de las dos naciones por el derecho que asista á alguno de sus ciudadanos ó súbditos, sino directamente ambas por razón del territorio en que deben ejercer su soberanía. No encuentro contestada ó tomada en cuenta esta razón entre los argumentos que Vuestra Excelencia se sirve transmitirme y en los cuales el Honorable Señor Sherman funda su oposición á lo que yo he propuesto.

"La cuestión (se dice) es esencialmente judicial y no envuelve el elemento de amistoso compromiso que con frecuencia aparece en el arreglo de disputas internacionales por medio de un arbitrador neutral." A la verdad, no comprendo cómo puede decirse tal cosa cuando la misma Convención que se cita recomienda que en esta clase de cuestiones á que ella se refiere, en estas mismas controversias nacidas de la fluctuacion de un río que cambia de lecho, se tenga muy presente, para adoptarlo sin duda alguna, el medio de un fallo arbitral interpuesto por comisionados que esco jan las partes, ó bien por un Gobierno amigo. No encuentro tampoco en lo que Vuestra Excelencia me comunica otras razones en que descanse la proposición que me he visto precisado á combatir ó que demuestren la inconveniencia de la mía. Por lo mismo, tengo que insistir en mi propuesta, hecha en nombre del Gobierno Mejicano, á cuya aceptación en terminos generales tiene derecho por el articulo XXI del tratado de Guadalupe Hidalgo, y no me es posible aceptar la del Departamento de Estado de los Estados Unidos, porque no se aviene con lo estipulado en la Convención de 1° de Marzo de 1889.

Con este motivo, me es grato reitarar á Vuestra Excelencia el testimonio de mi muy distinguida consideración.

IGNO. MARISCAL.

A Su Excelencia POWELL CLAYTON,
Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos de América.

[Inclosure 3.]

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS,
MEXICO, *March 16th 1898.*

Mr. Minister:

I have had the honor to receive the note in which Your Excellency, under date of the 10th instant, informs me that, having reported to Your Government, my note, of the 11th ultimo, relative to the Addition, proposed by it, of a Commissioner to the International Boundary Commission for the purpose of determining the Chamizal case, the Secretary of State insists upon his proposition and considers that my proposition, that the case be determined by one of the friendly Governments that I mention, gives to the matter an extension which was not contemplated by that Government, supposing that the machinery for the determination of the question already existed in the Convention of March 1, 1889, whereby the joint commission composed of representatives of the two countries was to examine and determine all the questions which might arise in consequence of the changes in the river bed which had occurred since the fixation of the boundary line in compliance with the Treaty of Guadalupe Hidalgo.

Before considering other reasons alleged by the Honorable Secretary of State I would call attention to an inaccuracy relative to his appreciation of the authority of the Joint Commission established by the Convention of March 1, 1889. The decision of the Commissioners is not decisive, and the course to be taken when from a beginning they do not agree regarding the point that occasions the controversy (that is to say, in cases like the one we are considering), is well explained at the end of Article VIII of said Convention, which is as follows: "Article VIII. If both Commissioners shall agree to a decision, their judgment shall be considered binding upon both Governments, unless one of them shall disapprove it within one month reckoned from the day on which it shall have been pronounced. In the latter case, both Governments shall take cognizance of the matter, and shall decide

it amicably, bearing constantly in mind the stipulation of Article XXI of the treaty of Guadalupe Hidalgo of February 2, 1848.

"The same shall be the case when the Commissioners shall fail to agree concerning the point which occasions the question, the complaint or the change, in which case each Commissioner shall prepare a report, in writing, which he shall lay before his Government."

From this it is inferred that even should a third Commissioner be named as a member of the joint Commission, notwithstanding that the appointment would be contrary to Article II of the said Convention, which establishes only two Commissioners, this third Commissioner would not have authority to determine the case, at most to give a third judgment (opinion) on the case, supposing that in no article of said Convention could be found the obligation of the Governments to submit finally to the decision of this person. Should it be said that such obligation arose from a new agreement between the two parties, then such stipulation would constitute an entirely new Convention, which it would be necessary to submit to the Senates of the two Republics, with all the formalities required for an international treaty. We would then fall into exactly the difficulty which the Honorable Mr. Sherman wishes to avoid in this case: a difficulty which he supposes my proposition would make, it being thus his proposal and not mine that would occasion it.

My proposal has been perfectly adjusted to the terms of the Convention which we should respect, in the case, provided by it, of the failure of the Commissioners to agree respecting the question submitted to them. That which should be done, therefore, in conformity with the article which I have copied, resolves itself to this, that the Governments should try to decide the matter in a friendly manner, "bearing constantly in mind the stipulation of Article XXI of the treaty of Guadalupe Hidalgo." Now, in this Article, which it is not necessary to transcribe in its entirety, it is stipulated that in case of any disagreement between the two nations, a resort shall not be had to reprisals nor other hostile measures but the advisability shall be considered of settling the difficulty by "the arbitration of Commissioners appointed on each side or by that of a friendly nation. And should such course be proposed (the article adds) by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case."

In view, then, of the Convention and Treaty to which I am referring, a new treaty is not necessary to stipulate that the Chamizal question may be settled by some friendly Government, as I have proposed. This is foreseen and previously stipulated for all cases of disagreement between the two Governments and especially for the questions treated by the Convention of 1889, which recommends having the means of arbitration at hand. This would not be the first case in which the two Governments appealed to this medium to determine a question between them, without the necessity of a new Convention establishing the arbitration, the action being founded solely on Article XXI of the treaty of Guadalupe Hidalgo. The obligation to accede in general to this medium now proposed by the Mexican Government, is clear according to this Article, unless it could be alleged that said medium was "altogether incompatible with the circumstances of the case."

The only possible doubt is whether the arbitration should be committed to Commissioners appointed on each side, or to a friendly Government. The reason which, upon making my proposal, I adduced for preferring the second, was that the Chamizal question did not emanate from the interest of one or more individuals protected by the Government, which is the most frequent case in these controversies, but from the direct and jurisdictional interest of each nation; that is from a question of international boundary; therefore it did not seem fitting nor proper that it should be determined by a private individual, though he might seem to be impartial by not being a citizen of either country, as first proposed by the Secretary of State, differing from that which he now proposes, that an American or Mexican jurist be named. Even though the jurist selected should be of a third nationality he cannot have the character of high respectability and prestige becoming a Judge about to pass judgment upon a question in which is interested, not indirectly one of the two nations by right of assisting some of its citizens or subjects, but both Governments directly by reason of the territory in which they should exercise their sovereignty. I do not find this reason answered or taken into account among the arguments Your Excellency sent me or those on which the Honorable Mr. Sherman founds his opposition to my proposition.

"The question (he says) being essentially judicial and not involving the element of friendly compromise which is so often apparent in the settlement of international disputes by a neutral

arbitrator." In truth, I do not understand how such a thing can be said when the same Convention referred to recommends that in this class of questions, to which it refers, in these same controversies arising from the fluctuations of a river that changes its bed, there be at hand, that they may without doubt be adopted, the means for an arbitral decision by Commissioners appointed on each side or by a friendly Government. Neither do I find in what Your Excellency has communicated to me other reasons on which to found the proposition which I find myself compelled to oppose, or which demonstrate the impracticability of my proposition. Therefore, I have to insist on my proposal, made in name of the Mexican Government, the acceptance of which in general terms is authorized by Article XXI of the treaty of Guadalupe Hidalgo, and it is not possible for me to accept the proposal of the Department of State of the United States, because it does not conform with the stipulation of the Convention of March 1, 1889.

With this motive, I renew etc.

IGNO. MARISCAL.

His Excellency POWELL CLAYTON,
etc., etc., etc.

Mr. Sherman to Mr. Clayton.

No. 370. DEPARTMENT OF STATE,
WASHINGTON, *April 15, 1898.*

POWELL CLAYTON, Esquire,
etc. etc.

SIR:

I have to acknowledge the receipt of your despatch No. 336, of the 21st ultimo, enclosing a copy of a note from the Mexican Minister for Foreign Affairs; setting forth the objections of his Government to the addition of a third Commissioner to the International (Water) Boundary Commission.

A copy of your despatch, and of Mr. Mariscal's note were sent to General Anson Mills, for an expression of his views in the matter. I enclose herewith, for communication by you to Mr. Mariscal, a copy of a letter from General Mills, dated the 5th instant, in which he gives his views, and explains the sense, in which the word "arbiter" was used by the Commission in its suggestion to the two governments, for the appointment of such third commissioner.

Respectfully yours,

JOHN SHERMAN.

Enclosu[redacted]bove.

[Inclosure.]

General Mills to Mr. Sherman.

DEPARTMENT OF STATE.

INTERNATIONAL (WATER) BOUNDARY COMMISSION.

UNITED STATES AND MEXICO.

Treaties of 1884 and 1889.

NO. 2 DUPONT CIRCLE.

WASHINGTON, D. C., *April 5th, 1898.*

To the Honorable The SECRETARY OF STATE,

Washington, D. C.

SIR:—

I have the honor to acknowledge the receipt of your letter of the 1st instant, enclosing copy of a letter of our Minister to Mexico, covering a note from the Mexican Minister of Foreign Affairs setting forth the objections of his government to the addition of a third commissioner to the International (Water) Boundary Commission, and requesting an expression of my views in the matter.

It is clear that the misunderstanding and embarrassment of the Mexican Minister of Foreign Affairs arises from the unfortunate and improper use of the word "arbiter" by the Commission in its suggestion to the two governments that a third commissioner be agreed upon and appointed to meet it. To have properly expressed its meaning, in its stead it should have used the word "umpire" or the Scotch "oversman." I know that it is true of myself and I am quite sure from our mutual discussion, that it is also true of the Mexican Commissioner.

We have for four years by "mutual representations" agreed upon every question submitted, save this "Chamizal," and regretted exceedingly that for reasons cogent to each of us, we were unable to agree upon this case, upon which so many others depend, but we each agreed that could a third commissioner be added ("in the spirit of Article XXI" if not wholly within the letter), as is usual in such cases of disagreement, that we could—either of us—surrender to the majority in this particular case without binding ourselves to it as a precedent for future similar cases, and while we did not go fully into detail in our suggestion, it was our understanding that this third commissioner was to be simply an auxiliary to our Commission in this case alone, neither increasing nor diminishing its province, authority or jurisdiction,

and leaving the two governments as free to act on our decision as they would have been had we decided the case alone.

This first alternative of the two proposed in Article XXI of the Treaty of Guadalupe Hidalgo, was taken because it appeared more simple, more expeditious, more economical and more amicable than the alternative of last resort of arbitration by "a friendly nation." For it did not appear to us that the case had reached that stage.

As the Mexican Minister of Foreign Affairs is of the opinion that the second alternative—arbitration by a foreign nation—can be resorted to under Article XXI of the Treaty of Guadalupe Hidalgo without an additional treaty, it follows if he is correct, that the first alternative in that article—arbitration by commissioners—can also be resorted to without further treaty, unless the Mexican Minister of Foreign Affairs should finally conclude that such reference of the question is "altogether incompatible with the circumstances of the case," which I hope he may not, should the full intention of the recommendations of the Joint Commission be explained to him, as I have endeavored to explain it above, and I trust he will agree to your first invocation for that method.

I see grave difficulties in referring this comparatively insignificant question to a national arbiter. The question is almost entirely technical and to understand and judge it with intelligence, the arbiter should be on the ground.

The character of the case is fully explained in the first two pages of our journal of November 6th, 1895, transmitted to your Department with my letter of August 4th, 1896, wherein it will appear that the case was brought on petition of claimant, Pedro Y. Garcia and others—citizens of Mexico—and by mutual agreement between the Commissioners it was admitted that the sole question for decision was, whether the river in its movement over some 600 acres of land during the past 40 years, had been by gradual erosion and deposit or by avulsion.

Other important cases are suspended pending its determination, which renders it all the more necessary that as early a decision as practicable may be had. Arbitration by another nation, will necessarily be prolonged far beyond any possible prolongation by our Commission, with a third member added for this case alone.

I have the honor to be,

Very respectfully yours, ANSON MILLS

Brigadier General, U. S. Army, (Retired),

Commissioner.

Mr. Clayton to Mr. Sherman.

No. 377. LEGATION OF THE UNITED STATES,
MEXICO, *April 21, 1898.*

To the Honorable JOHN SHERMAN,
Secretary of State, Washington, D. C.

SIR:

Replying to your No. 370, of the 15th instant, relating to the "Chamizal" case and the proposition for the selection of an additional or third Commissioner to the International (Water) Boundary Commission, in which you instruct me to transmit to Mr. Mariscal a copy of General Mills' letter of the 5th instant, I have the honor to report that I have today complied with your instructions, copy of my note herewith enclosed.

I have the honor to be, Sir,

Your obedient servant, POWELL CLAYTON.

Enclosure: Mr. Clayton to Mr. Mariscal, April 21, 1898.

[Inclosure.]

Mr. Clayton to Señor Mariscal.

MEXICO, *April 21, 1898.*

His Excellency IGNACIO MARISCAL,
Minister of Foreign Affairs.

Mr. Minister:

Referring to the "Chamizal" case, and to your note of March 16th last setting forth your objections to the addition of a third Commissioner to the International (Water) Boundary Commission, I am instructed to transmit, and do hereby transmit, to Your Excellency a copy of a letter from General Anson Mills to the Honorable Secretary of State of the United States, dated April 5, 1898, in which he gives his views and explains the sense in which the word "arbiter" was used by the Commission in its suggestion to the two Governments for the appointment of such third Commissioner.

I have the honor to renew to Your Excellency the assurances of my high consideration.

POWELL CLAYTON.

Enclosure.[a]

[a] [For this inclosure see p. 365, supra.—Agent's note.]

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *19 de julio de 1907.*

Número 10.

Excelentísimo Señor:

Hace varios años que con motivo del cambio que ha habido en el curso del Río Bravo, con posterioridad al tratado de Guadalupe Hidalgo de 1848, se viene discutiendo cual debe ser la línea divisoria entre México y los Estados Unidos, en un punto llamado "El Chamizal" situado entre Paso del Norte (hoy Ciudad Juárez) y El Paso, Texas.

Con el deseo de llegar á algún acuerdo sobre este interesante asunto, el Gobierno de México le dió orden al Jefe de la Comisión Mexicana de Límites para que sometiera ese caso al estudio y resolución de la Comisión Internacional de Límites (International Boundary Commission) y con ese objeto se reunieron los dos Comisionados el 13 de julio de 1896.

Después de un debate muy largo, en el que se presentaron diversos argumentos de una y otra parte, no fué posible que los Comisionados llegaran á una acuerdo y por lo contrario sus conclusiones fueron diametralmente opuestas.

Conocido este resultado por los dos gobiernos, el de los Estados Unidos de América propuso, por conducto del Ministro Americano en México, con fecha 30 de diciembre de 1898 que se incorporase á la Comisión Internacional de Límites un tercer Comisionado, como árbitro que resolviera en definitiva las diferencias ó puntos de desacuerdo que en el caso del Chamizal tenían los dos Comisionados.

La Secretaría de Relaciones Exteriores de México en notas de 11 de febrero y 16 de marzo de 1898 manifestó su inconformidad al nombramiento del árbitro por los gobiernos interesados en esa cuestión y objetó á la falta de autorización legal para que la Comisión Internacional de Límites pudiera en definitiva resolver este grave asunto, toda vez que sus acuerdos tenían que someterse á la aprobación de sus respectivos gobiernos; y propuso que el conflicto se resolviera por arbitramento confiando esa delicada comisión á algún Jefe de Estado ó Soberano, de acuerdo con la prevención del artículo XXI del tratado de Guadalupe Hidalgo,

proponiendo como candidatos á los Presidentes de las Repúblicas de Colombia, Chile y Ecuador; y á la Confederación Suiza y Rey de los Belgas.

Por su parte el Gobierno de los Estados Unidos hizo notar que el nombramiento como árbitro de un Jefe de Estado sería darle al asunto una importancia y una extensión extraordinaria y no prevista, é insistió en que tales diferencias se resolvieran por la Comisión Internacional de Límites, creada precisamente para resolver todas las cuestiones suscitadas por los cambios del Río Bravo.

En este estado las cosas, he recibido instrucciones de mi Gobierno para proponer á ese Departamento de Estado, como tengo la honra de hacerlo, una solución que viene á armonizar las ideas emitidas por una y otra parte y á crear un medio sencillo para que pueda marcarse en definitiva la línea divisoria de los dos países, entre Ciudad Juárez, México y El Paso, Texas, alterada por las corrientes del Río Bravo.

Al efecto mi Gobierno propone con fundamento del artículo XXI del tratado de Guadalupe Hidalgo de 1848 y 8° de la Convención de 1° de marzo de 1889, el nombramiento de una Comisión Mixta, compuesta de los mismos miembros que forman la Comisión Internacional de Límites é integrada y presidida por un jurista designado por el Gobierno del Canadá. Dicho tercer miembro de la Comisión tendrá las facultades necesarias para dictar su fallo en todas las cuestiones en que discrepen los otros dos Comisionados.

Mi Gobierno estima que la respetabilidad reconocida por todos del Gobierno del Canadá y su alta imparcialidad respecto de los Gobiernos mexicano y americano, con los cuales cultiva por igual las más cordiales relaciones, son prendas seguras de la justicia que ha de presidir los actos del Comisionado que él nombre y constituyen la más completa garantía para las dos altas partes contratantes.

Por cuanto á las cuestiones que deben someterse al estudio y fallo definitivo de la Comisión Mixta, así como al procedimiento á que ha de sujetar sus trabajos, mi Gobierno opina que una y otra cosa deben simplificarse todo lo más que sea posible á fin de evitar los tropiezos y dificultades que el rigor del tecnicismo, ó de la forma, pudieran provocar.

En lo que se refiere al procedimiento sería de desearse que la Comisión obrara con la más absoluta libertad y que ella lo fije y reglamente, precisando el tiempo y la forma en que las pruebas

han de recibirse, manera de evacuarlas, facultades del tercer miembro que deba presidir la Comisión, en lo que al régimen de dichos trabajos se refiere; y todo lo demás que sea necesario para llegar al resultado final que se persigue.

Y por cuanto al fondo de la cuestión por someterse á arbitramento, deberá ser el trazo de la línea divisoria entre los dos países, en la sección territorial llamada "Chamizal" entre ciudad Juárez, Estado de Chihuahua, México, y El Paso, Texas, Estados Unidos de América, sobre los planos que suministrarán los dos gobiernos y con absoluta sujeción al tratado de Guadalupe Hidalgo de 1848.

El fallo de la Comisión Mixta ha de ser definitivo é inapelable.

Mientras esta cuestión se resuelve en definitiva, deberá mantenerse el *statu quo*, en cuanto á la posesión del terreno; sin que ese orden de cosas establezca derechos, ni perjuicios, ni para una ni para otra parte; y en consecuencia ese Departamento de Estado expedirá, ó promoverá que se expidan las órdenes necesarias para que los tribunales y demás autoridades de El Paso, Texas, se abstengan de todo antiguo ó nuevo procedimiento que se relacione con este asunto, en tanto no dicte su fallo la Comisión Mixta que trata de organizarse.

Reitero á Usted, Excelentísimo Señor, las seguridades de mi más alta consideración.

ENRIQUE C. CREEL.

Excelentísimo Señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.

[Translation.]

EMBASSY OF MEXICO TO THE UNITED STATES OF AMERICA,
WASHINGTON, *July 19, 1907*.

No. 10.

MOST EXCELLENT SIR:

By reason of the change that has taken place in the course of the Rio Grande since the treaty of Guadalupe Hidalgo of 1848, the question of what should be the dividing line between Mexico and the United States at a point called "El Chamizal" between Paso del Norte (now Ciudad Juarez) and El Paso, Texas, has been under discussion for a number of years.

Desirous of arriving at some agreement on this interesting matter, the Government of Mexico instructed the Head of the Mexican Boundary Commission to submit the case to the examination and decision of the International Boundary Commission and the two Commissioners met for that purpose on July 13, 1896.

After quite an extensive debate in the course of which various arguments were presented by both parties, the Commissioners were unable to reach an agreement; on the contrary, their conclusions were diametrically opposed.

When this outcome was known to the two Governments, the United States of America proposed, through the American Minister to Mexico, on December 30, 1898, (1897) to appoint on the International Boundary Commission a third Commissioner who, in the character of an umpire, would finally settle all differences or points of disagreement that existed between the Commissioners in the Chamizal case.

The Department of Foreign Relations of Mexico, by notes of February 11 and March 16, 1898, declared its non-concurrence in the appointment of the umpire by the Governments interested in that question and objected that the International Boundary Commission was without legal authority enabling it to effect a final settlement of this grave matter, inasmuch as its decisions had to be submitted to the approval of the respective Government; it proposed a solution of the difference by means of arbitration, some Chief Magistrate or Sovereign being entrusted with that delicate mission in accordance with the provision of Article XXI of the Treaty of Guadalupe Hidalgo and nominated the Presidents of the Republics of Colombia, Chili, and Ecuador, the Swiss Confederation and the King of the Belgians.

For its part, the Government of the United States observed that the appointment of a Chief Magistrate as umpire would impart to the question extraordinary and unlooked for importance and magnitude, and insisted upon a solution of differences of this nature by the International Boundary Commission which had been created for the very purpose of deciding all questions growing out of changes in the course of the Rio Grande.

Such being the state of things, I have received from my Government instructions to propose, as I now have the honor to do, to the Department of State, a solution that will harmonize the ideas advanced on both sides and afford a simple method for the final demarkation of the boundary line of both countries between Ciudad Juarez, in Mexico, and El Paso, in Texas, altered by the flow of the Rio Grande.

To that end, my Government proposes, on the strength of Articles XXI of the treaty of Guadalupe Hidalgo of 1848 and 8 of the Convention of March 1, 1889, that a Mixed Commission

consisting of the members of the International Boundary Commission and completed and presided over by a jurist designated by the Government of Canada be appointed. The said third member of the Commission will be vested with the necessary powers to render his award upon all questions over which the other two Commissioners may disagree.

My Government believes that the universally recognized respectability of the Government of Canada and its preeminent impartiality towards the Mexican and American Governments are a sure pledge of the justice that will guide the acts of the Commission it may appoint and constitute the fullest guarantee for the two High Contracting Parties.

As to the questions that are to be referred to the examination and final decision of the Mixed Commission, and also the rules of procedure that are to govern its labors, my Government is of opinion that both should be simplified as much as possible so as to avoid the obstacles and difficulties that stringent technicalities or points of form might raise.

As regards the procedure, it would be desirable to let the Commission conduct its labors in absolute freedom and that the Commission itself should determine and regulate its rules by specifying the time and form in which the evidence shall be received, the manner of acting upon it, the powers of the third member who is to be the President of the Commission in all that relates to the conduct of the said labor, and everything else that may be necessary to achieve the end in view.

And as for the essential point of the question to be submitted to arbitration, it shall be the tracing of the dividing line between the two countries in the part of the territory called "Chamizal" between Ciudad Juarez, State of Chihuahua, Mexico, and El Paso, Texas, United States of America, upon the plans supplied by the two Governments and in strict conformity to the treaty of Guadalupe Hidalgo of 1848.

The decision of the Commission shall be final and without appeal.

Pending a final settlement of the question, the *status quo* shall be maintained as far as the ownership of the soil is concerned, but this condition of things shall not establish rights, nor disadvantages for the one or the other party, and the Department of State will, in consequence, issue or cause to be issued such orders as may be necessary to have the courts and other authorities of El Paso, Texas, refrain from continuing or instituting any proceedings connected with this question, until the Mixed Commission

whose organization is herein contemplated shall have rendered its award.

I renew to you, Most Excellent Sir, the assurances of my highest consideration.

ENRIQUE C. CREEL.

Hon. ELIHU ROOT,
Secretary of State.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.
WASHINGTON, *11 de mayo de 1908.*

No. 197.

Excelentísimo señor:

En virtud de instrucciones especiales que he recibido de mi Gobierno, tengo la honra de suplicar á usted que, en vista de ir á presentarse al Departmento del digno cargo de usted muy en breve un proyecto de arreglo general y satisfactorio de las cuestiones de la frontera entre México y los Estados Unidos—en primer término la de El Chamizal—y atendiendo á que los precedentes que establecieran cualesquiera resoluciones á que hoy llegara la Comisión Mixta de Límites, podrían dañar, y aún hacer imposible, tan conveniente arreglo, se den por ambos Gobiernos instrucciones á sus comisionados, para que se abstengan de pronunciar ningún fallo ó resolución en los pendientes casos de bancos, en tanto no se decida algo sobre el plan que México propondrá á los Estados Unidos, dentro de un plazo que será el más corto posible.

Me permito agregar que, como ya he tenido la honra de anunciar á usted, muy pronto me serán remitidas las instrucciones relativas á la negociación del nuevo Tratado.

En espera de que usted no tendrá inconveniente en acceder á lo antes indicado, me es grato, Excelentísimo señor, reiterar á usted las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,
No. 197. WASHINGTON, *May 11, 1908.*

Most Excellent Sir:

Under special instructions I have received from my Government, I have the honor to ask, in view of the fact that there will be very shortly submitted to the Department in your worthy charge a draft for a general and satisfactory settlement of the boundary questions between Mexico and the United States—foremost that of El Chamizal—and in consideration of the further fact that precedents which might be established by any decisions that the Mixed Boundary Commission should now reach could impair so desirable a settlement or even make it impossible, that both Governments instruct their Commissioners to refrain from rendering any award or decision in the pending Banco cases until some conclusion shall have been reached respecting the plan Mexico will propose to the United States within as short a time as possible.

I permit myself to add that, as I have already had the honor to announce to you, the instructions relative to the negotiation of the new Treaty will be forwarded to me at a very early date.

Hoping that you will see no objection to agreeing to the foregoing, I have pleasure, Most Excellent Sir, in renewing to you the assurances of my highest and most distinguished consideration.

JOSE F. GODOY.

Hon. ELIHU ROOT,
Secretary of State of the United States.

Mr. Bacon to Señor Godoy.

DEPARTMENT OF STATE,
Serial No. 250. WASHINGTON, *May 21, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 197, of the 11th instant, in which you propose that both Governments instruct the representatives on the International Boundary Commission to refrain from making any award or decision in the pending "banco" cases, until some conclusion shall have been reached respecting the plan which your Government will submit to the Department in a very short time for a general and satisfactory settlement of the boundary questions between the United States and Mexico.

In reply I have the honor to say that the Department agrees to the proposition you make, and has instructed the American Commissioner, General Anson Mills, accordingly.

Accept, Sir, the renewed assurance of my high consideration.

ROBERT BACON,
Acting Secretary.

Señor Don JOSÉ F. GODOY,
Charge d'Affaires ad interim of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MEXICO
EN LOS
ESTADOS UNIDOS DE AMERICA

WASHINGTON, 21 *de mayo de 1908.*

Nº. 203.

Excelentísimo señor:

Con referencia á los antecedentes y á la correspondencia cruzada entre esta Embajada y el Departamento del digno cargo de usted, acerca del caso de El Chamizal, y de la situación existente en la Línea Divisoria entre México y los Estados Unidos y las cuestiones que se han suscitado con respecto á los expresados límites, tengo la honra de informar á usted que mi Gobierno acaba de remitirme instrucciones detalladas, con el fin de proponer á usted, como me permito proponerlo, que, con el objeto de resolver de manera definitiva, no sólo el asunto de El Chamizal, sino todos los casos que se relacionen con esas cuestiones referentes á los límites entre ambos países, se celebre un nuevo tratado de límites, estando mi Gobierno en la creencia de que con ese nuevo tratado quedarían zanjadas todas las cuestiones hasta hoy suscitadas en los ya expresados límites.

Estima mi Gobierno que en el preámbulo de dicho nuevo tratado, convendría declarar con toda precisión que se encuentra necesario y conveniente negociar tal pacto, en virtud de que, según los anteriores hoy en vigor sobre la misma materia, la línea nacional fluvial entre ambos países ha llegado á ser una imaginaria, que ocupa el lugar en donde en 1853 corrieron los ríos Bravo y Colorado, línea que no coincide con los actuales cursos de estos ríos, que proporcionarían una frontera natural inmejorable; que esta peculiar condición actual da lugar á frecuentes dudas y dificultades, acerca de la jurisdicción que corresponde á los terrenos comprendidos entre la línea imaginaria

referida y los cursos reales de los ríos, y que el propuesto tratado tendería á resolver para siempre esas dudas y dificultades.

Estima mi Gobierno que en el cuerpo del nuevo pacto internacional sería conveniente y aún adecuado, estipular los siguientes artículos ó puntos esenciales:

Primero.—Que se abandona por ambos países la línea divisoria fluvial que pactaron tratados anteriores, adoptando para lo presente como límite fluvial entre ellos los centros de los cursos normales de los ríos Colorado y Bravo, tales como existen y entre los mismos puntos iniciales y terminales que ahora la limitan. Si el Gobierno de los Estados Unidos lo deseara, podrían eliminarse de esta regla las islas propiamente dichas y de formación anterior á 1853, que conservarán la nacionalidad que ahora tienen de *derecho*, y aún podrían eliminarse en iguales términos los diversos terrenos denominados El Chamizal, el Bosque de Córdoba, la Isla de San Elizario y el banco artificial del Horcón, sólo que de este último grupo se tendrían que eliminar ó todos ó ninguno.

Segundo.—Que para lo sucesivo la línea divisoria entre los dos países seguirá siempre los cambios que sufran en sus cursos los ríos limítrofes, ya sea debido al aluvión ó la mutación de álveo. Deben exceptuarse de esta regla las mutaciones de álveo que segreguen areas superiores á un límite, que se puede fijar en cuatrocientas hectáreas, ó sea cerca de mil acres, ó que contengan una población de más de doscientos habitantes; y á estos cambios anormales se les aplicarán las reglas que fija el artículo siguiente.

Tercero.—Siempre que ocurra y se compruebe uno de estos cambios anormales, cada uno de los dos gobiernos nombrará un comisionado, con facultades análogas á los actuales comisionados de límites, para que estudien si es factible volver el río á su cauce normal, que será lo que de preferencia se haga; pero si esto resultare no deseable ó imposible, procederían los comisionados á declarar aquel terreno como continuando bajo su anterior jurisdicción, y una vez aprobado su dictámen por sus gobiernos, procederían á eregir y colocar los monumentos correspondientes, según el plan que la Comisión Internacional de Límites Fluviales hoy tiene aprobado para los bancos del Río Bravo.

Cuarto.—Debe estipularse que no se permitirá ni se tolerará ningún cambio artificial de cauce de los ríos limítrofes, por lo cual se considerarán como estrictamente prohibidas todas las obras ó las acciones que puedan producirlos, bajo fuertes penalidades é indemnizaciones que se fijen contra los infractores de este artículo; y si un cambio artificial se hubiese ya efectuado, se pro-

curará hasta donde sea posible volver el río á su curso natural á costa de los infractores, y si esto no se lograre se tratará al terreno segregado y al cambio artificial, lo mismo que se ha indicado para los casos de cambio anormal natural de un río.

Quinto.—Se declaran por ambos gobiernos inviolables y de validéz exclusiva los títulos privados de propiedad, que tengan fuerza legal al pactarse el tratado sobre los terrenos que en virtud de él cambien de jurisdicción nacional, y al efecto se comprometerán ambos gobiernos á hacerlos respetar y proteger por sus tribunales como se respetan y protegen por ellos los títulos de propiedad de sus propios nacionales.

Estos son los artículos esenciales que podrá comprender el nuevo Tratado de Límites; pero, si los gobiernos contratantes lo creyeren oportuno, seguirán luego en el mismo tratado los artículos relativos al uso de las aguas de los ríos internacionales, respecto de cuyos detalles no entre por ahora, hasta saber si se desea incluir tales artículos en el nuevo pacto internacional.

Abrigo la esperanza de que la idea de celebrar el nuevo tratado de límites merecerá en lo general la aprobación de usted, como también que estará usted de acuerdo con los puntos ó artículos esenciales á que he hecho alusión, para así poder continuar las negociaciones y llevarlas á su término, á fin de celebrar ese nuevo pacto internacional, que será de tanta importancia y tan útil para ambos países.

Me es grato, Excelentísimo señor, reiterarle las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY.

Excelentísimo señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO IN THE UNITED STATES OF AMERICA.

No. 203. WASHINGTON, *May 21, 1908.*

Your Excellency:

Referring to the previous history of the case and to the correspondence exchanged between this Embassy and the Department under your worthy charge, regarding the El Chamizal case and regarding the existing situation on the boundary line between Mexico and the United States, as well as the questions which have arisen with regard to these boundaries, I have the honor to inform you that my Government has just sent me detailed instructions

to propose to you, as I take the liberty of doing, that, for the purpose of definitely settling not only the El Chamizal matter but all cases arising from questions concerning the boundaries between the two countries, a new boundary treaty be concluded, it being the belief of my Government that by means of such a new treaty all the questions which have arisen up to the present regarding these boundaries would be settled.

My Government thinks that it would be appropriate to declare with absolute precision in the preamble of the new treaty that it is found necessary and expedient to conclude such an agreement for the reason that, in accordance with the previous treaties on the subject, the national river boundary between the two countries has come to be an imaginary one, occupying the place where the Rio Grande and the Colorado River ran in 1853 and being a line which does not coincide with the present courses of these rivers, which would afford the best possible natural boundary lines; that this present peculiar condition gives rise to frequent doubts and difficulties as to the jurisdition to which the lands comprised between the said imaginary line and the real courses of the river belong, and that the proposed treaty would tend to settle these doubts and difficulties forever.

My Government deems that it would be suitable and appropriate to embody the following articles or essential points in the new international compact:

First. That both countries abandon the fluvial boundary line agreed upon in former treaties and adopt for the present as the river boundary between them the centers of the normal courses of the Colorado and Rio Grande rivers as they now exist, and between the same initial and terminal points as now limit said boundary. If the United States Government should so desire, the islands properly so-called which were formed prior to 1853 might be excepted from this rule and preserve the nationality which they now have by *right*, and there might even be eliminated in the same manner the several lands called El Chamizal, El Bosque de Cordoba, the island of San Elizario, and the artificial bar of El Horcon, only that either all or none of this group would have to be eliminated.

Second. That in future the boundary line between the two countries shall always follow the changes undergone by the boundary rivers in their courses, whether these changes are due to alluvium or to a change of bed. From this rule must be accepted changes of bed which segregate areas exceeding a certain limit, which may

be fixed at 400 hectares, or about 1,000 acres, or which contain a population of over 200 inhabitants. To these abnormal changes the rules established in the following article shall be applied.

Third. Whenever one of these abnormal changes occurs and is proven, each of the two Governments shall appoint a commissioner, with powers similar to those of the present boundary commissioners, for the purpose of investigating whether it is feasible to restore the river to its normal channel, which shall be done preferably; but if this is found to be undesirable or impossible, the commissioners shall proceed to declare the land as continuing under its previous jurisdiction, and as soon as their decision is approved by their Governments, they shall proceed to locate and set up the proper monuments, in accordance with the plan which has now been approved by the International River Boundary Commission for the bars of the Rio Grande.

Fourth. It must be stipulated that no artificial change in the channel of the boundary rivers will be permitted, so that all works or acts which might produce such changes shall be considered as being strictly prohibited under heavy penalties and indemnities to be determined against persons violating this article; and if an artificial change should already have been made, endeavor shall be made as far as possible to return the river to its natural channel at the expense of the transgressors, and if this can not be done the land segregated and the artificial change shall be treated in the same manner indicated for cases of normal change in a river.

Fifth. Private titles to property which have legal force at the time this treaty is concluded and which relate to lands which change national jurisdiction by virtue of this treaty, are hereby declared by both governments to be inviolable and exclusively valid, for which purpose the two governments pledge themselves to cause them to be respected and protected by their courts just as the titles to property of their own citizens are respected and protected.

These are the essential articles which the new Boundary Treaty ought to contain, but if the contracting Governments should deem it proper, they might be followed in the same treaty by articles relating to the use of the waters of the international rivers, into the details of which I will not enter at present, or until I know whether it is desired to include such articles in the new international compact.

I cherish the hope that the idea of concluding a new boundary treaty will meet with your approval in general, and also that you

will agree with the essential points or articles to which I have alluded, so that we may thus continue and complete the negotiations for the conclusion of this new international compact, which will be of such great importance and utility to both countries.

I take pleasure, most excellent Sir, in reiterating to you the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

His Excellency Mr. ELIHU ROOT,
Secretary of State of the United States,
City.

Mr. Root to Señor Godoy.

DEPARTMENT OF STATE,
WASHINGTON, *May 26, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 203, of the 21st instant, in which you inform the Department that your Government has instructed you to propose to the Department that a new boundary treaty be concluded between the United States and Mexico, for the purpose of definitely settling not only the El Chamizal matter but also all cases arising from questions concerning the boundaries between the two countries; and you propose a basis for such a treaty.

In reply I have the honor to inform you that your note is receiving the Department's most attentive consideration.

Accept, Sir, the renewed assurances of my high consideration.

ELIHU ROOT.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

Nº. 74. WASHINGTON, *Octubre 14 de 1908.*

Excelentísimo Señor:

Con referencia á la correspondencia cruzada entre esta Embajada y el Departamento del digno cargo de usted, y de las demás gestiones que se han hecho para arreglar lo más pronto posible nuestras cuestiones de límites fluviales, tengo la honra de manifestar

á usted, por instrucciones especiales que he recibido de mi Gobierno, que cuando en el mes de Mayo último, México por conducto de esta Embajada, presentó un proyecto para un nuevo Tratado de Límites, ambos gobiernos convinieron en suspender el fallo y resolución de los casos pendientes de "bancos," aplazándose por tal motivo los trabajos que tendieran á la materialización de la convención de bancos de 1905, entretanto los Estados Unidos examinaban la proposición de México y decidían si les era aceptable en principio:—En caso de serlo, se abandonarían definitivamente las labores de implantación del convenio sobre bancos, y se procedería sin tardanza á dar forma al nuevo Tratado y someterlo á su ratificación; pero si el mencionado proyecto no era aceptado, entonces se proseguiría el arreglo de los casos pendientes, con las anteriores reglas que servían de norma á la Comisión Mixta, y de acuerdo con los Tratados y proposiciones aceptadas.

Así, pues, la prolongación indefinida ó la terminación pronta de la suspensión de los trabajos de la Comisión Mixta en sus labores de bancos, depende únicamente de que el Gobierno de este país se digne decir si acepta ó nó el principio fundamental del nuevo Tratado, siendo esa contestación tanto más urgente, cuanto que cada día que pasa, los interesados americanos en los bancos del Alto Río, los que lo están en la cuestión del "Chamizal," y por último, los poseedores del Bajo Río, se muestran más impacientes y más hostiles y agresivos, dando lugar á una constante intervención diplomática, y por otra parte, tratándose principalmente de los últimos, han pasado ya trece años desde que se tomó en consideración la cuestión que se le refiere, y que motivó por ambos gobiernos un Tratado cuya aplicación es de justicia no retardar.

Al manifestar á usted lo anteriormente expuesto, me permito además advertir que mi Gobierno estima que al de los Estados Unidos no podrá pasar inadvertida la conveniencia de que se sirva resolver cuanto antes sobre nuestra propuesta, á fin de obtener, ó que se reanuden pronto los trabajos pendientes, aplicando los viejos principios, ó que se tenga la seguridad de que aceptado el nuevo Tratado, la situación se resuelva en breve satisfactoriamente.

Con este motivo me es grato, Excelentísimo Señor, reiterar á usted las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY.

Excelentísimo Señor ELIHU ROOT,

Secretario de Estado de los Estados Unidos de América.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA
WASHINGTON, *October 14, 1908.*

No. 74.

Most Excellent Sir:

With reference to the correspondence exchanged between the Embassy and the Department under your worthy charge, and to the other steps taken to arrive at the earliest possible settlement of our water boundary questions, I have the honor, under special instructions I have received from my Government, to say that when Mexico submitted, in May last, through this Embassy a projet of a new Boundary Treaty, both Governments agreed to defer the awards and decisions in the pending "banco" cases, and to suspend, for that reason, the work intended to put into effect the "Bancos" Convention of 1905, while the United States would examine Mexico's proposal and decide whether or not it was acceptable in principle. If acceptable, the work of carrying out the "Bancos" Convention would be finally abandoned and steps would be taken without delay to frame the new Treaty and submit it to ratification; but if the above mentioned projet were not accepted, then the settlement of the pending cases would be followed up under the previous rules which governed the Mixed Commission and in accordance with the Treaties and propositions already accepted.

So that the indefinite prolongation or prompt termination of the suspension of the labors of the Mixed Commission in its "Bancos" work, solely depends on the Government of this country condescending to say whether or not it accepts the fundamental principle of the new treaty. The desired reply is all the more urgent as with every day that passes, the interested Americans on the banks of the Upper River, the persons concerned in the "Chamizal" question, and lastly, the landholders on the Lower River display more and more impatience, hostility and aggressiveness, giving occasion for increasing diplomatic intervention, and on the other hand, especially in the case of those last named, thirteen years have already elapsed since the question in which they are concerned and which was for both Governments the cause of a Treaty whose enforcement it is not just to delay, was taken into consideration.

In making the foregoing statement, I venture further to remark that my Government holds that the Government of the United

States cannot fail to perceive the expediency of its kindly passing upon our proposition as soon as possible, so that the pending work shall either be resumed under the former principles, or the assurance be gained that with the acceptance of the new Treaty an early and satisfactory solution shall be brought into the situation.

I have pleasure in renewing to you, on this occasion, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

Mr. Root to Señor Godoy.

Serial No. 361.

DEPARTMENT OF STATE,
WASHINGTON, OCTOBER 22, 1908.

SIR:

I have the honor to acknowledge the receipt of your note No. 74, of the 14th instant, requesting an early reply to your note No. 203, of May 21, 1908, in which you presented certain propositions of your Government looking to the earliest possible settlement of the water boundary questions pending between the United States and Mexico.

An answer to your note of May 21, 1908, has been delayed both on account of the absence of the Secretary of State during his summer vacation and because the Department has been in some doubt as to the precise effect which it was the intention of the Government of Mexico to give to the suggested exceptions indicated in the paragraph of your note of May 21, 1908, setting forth the first proposition suggested as a basis for the proposed new treaty.

The Department agrees in principle with the project as proposed by you, observing, however, as to the first proposition, that, in order to accomplish the object sought, the adoption of the present courses of the Rio Grande as they now exist as the international boundary, it is important that there should be no exceptions, unless it be as to tracts the sovereignty of which has already been formally and finally determined.

As to the second proposition, the exclusion of tracts having an area exceeding 400 hectares or a population of over 200 inhabitants, the Department is of the opinion that this exclusion should be limited to changes of the river course through avulsion, since such a provision appears wholly inapplicable as applied to a change by a gradual erosion and accretion. As applied to such changes it would seem to have no effect except perhaps to suggest to some

claimant at some time in the distant future the possibility of a successful effort to unsettle private titles and displace national jurisdiction over land formed by a long and gradual process of accretion.

As to the third and fourth propositions in your note of May 21st last, there are some amendments as to methods of procedure which suggest themselves to the Department, but which do not affect the general intent of these provisions. The number and variety of the cases in which the services of special commissioners would be required in order to carry out successfully the purposes of the proposed treaty, suggest to the Department that it may be desirable to provide for the continued maintenance of a permanent commission similar to that established under the treaty of 1889, but endowed with the new powers now contemplated, instead of relying upon a separate commission in each case.

Several reasons incline the Department to this view. In the first place, it seems desirable that some body should always be in existence ready upon short notice at the instance of either Government to consider whether or not an avulsive change has taken place of the character described in propositions two and three, and to decide as speedily as possible the intricate questions which arise out of such changes. The necessary delay incident to the creation of a special commission might well afford time and opportunity for serious difficulties between the citizens of the two countries living on the border. Again, it would seem desirable that there should be some international commission to consider, upon the request of either Government, whether or not any works under process of construction threaten a prohibited change in the course of the river, and whether or not, if such a change has been made, it is reasonably practical and desirable to restore the river to its original course. Finally, the services of such a commission in providing official maps and charts of "bancos" or other land transferred under the provisions of the proposed treaty would be of the highest utility in enabling the two Governments to carry out properly the highly important provisions of proposition five in regard to the safeguarding of private titles.

If these views commend themselves to the Mexican Government, it may be desirable, either by means of special provisions which might be inserted in the proposed convention, or perhaps by way of a supplementary convention, to provide for the continued maintenance of a permanent international boundary commission. In this connection the Department suggests that, pending further

negotiations, the present International Boundary Commission be authorized to proceed with its labors under Article 3 of the treaty for the elimination of "bancos" in the Rio Grande, signed at Washington March 20, 1905, for the purpose of finally marking "on the ground with suitable monuments" the fifty-eight "bancos" eliminated by that treaty, and securing whatever data may be deemed desirable and of probable future utility in determining the private ownership of other "bancos" which might be similarly situated without, however, proceeding to the ultimate decision of any case not as yet formally decided, until further instructed by the two Governments.

Accept, Sir, the renewed assurance of my high consideration.

ELIHU ROOT.

Señor Don José F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

WASHINGTON, *12 de diciembre de 1908.*

Nº. 123.

Excelentísimo señor:

Refiriéndome á las notas cruzadas entre esta Embajada y el Departamente del digno cargo de usted, acerca de las negociaciones de un nuevo tratado de límites, y especialmente á la nota de usted número 361, de 22 de octubre último, tengo la honra de manifestar á usted que, después de enterarse la Secretaría de Relaciones Exteriores de mi país del contenido de esa nota, y habiendose obtenido un informe sobre el particular del Jefe de la Comisión Mexicana de Límites, mi Gobierno nota con agrado que usted acepta como principio fundamental del nuevo tratado el reconocimiento por las dos naciones de que á la fecha, y en virtud de la invariabilidad de la línea divisoria fluvial, proclamada por el pacto de límites de 1853, la frontera entre ellas ha dejado de estar á lo largo de los cursos reales de los ríos Colorado y Bravo, los que han cambiado casi por completo de su posición de aquella época, debido á movimientos naturales erosivos y avulsivos, como ha dado en llamarseles, y que la solución sugerida es la adopción convencional de los cursos presentes y reales de los mencionados

ríos, como nuevo límite internacional, así como en la de ciertas reglas generales aplicables á sus futuros cambios que permitan que se conserve siempre, y hasta donde sea posible, una línea geográfica natural como frontera, reglas que no serían sino la aplicación ó la confirmación de las estipuladas en las convenciones de 1844 y de 1905.

De que el Departamento del digno cargo de usted acepte en principio nuestra proposición se deduce á *fortiori* que conviene en que son mexicanos todos los terrenos que actualmente quedan al Sur del curso del río Bravo de 1853, y americanos los que quedan á su Norte, con excepción de las fracciones monumentadas llamadas "Bosque de Córdoba" é "Isla de San Elizario," y de la extensión de frontera comprendida entre Río Grande City y el Golfo de México, en los cuales la línea divisoria ha sido adoptada de común acuerdo como yaciendo en los primeros dos á lo largo de la serie de monumentos ahí erigidos, y en el segundo á lo largo del curso real del Río Bravo. Resulta así por lo tanto reconocido por los Estados Unidos como mexicano el terreno denominado "El Chamizal."

Ahora bien, el aspecto práctico y ventajoso de la proposición hecha por mi Gobierno consiste en buscar que se pacte entre los dos paises un canje de propriedades que se supónen compensarse aproximadamente en importancia y valor, teniendo como fin: por una parte, concluir de una sola vez las cuestiones pendientes; y por otra, adoptar por ahora y conservar en lo porvenir el curso natural del río como línea divisoria en vez de la línea sinuosa imaginaria que se deduce de las convenciones que rigen.

Pero como entre las fracciones que México posee se encuentra una de interés muy grande, que es la de El Chamizal, mi Gobierno no está dispuesto á incluirla en el cambio general, por no haber ninguna que le sea equivalente entre las americanas que mediante él adquiriría; más, comprendiendo el interés que para los Estados Unidos tiene el poseer esa fracción del "Bosque de Córdoba" (monumentada ésta ya como mexicana) y el que para ambas naciones tiene que el río corriente se adopte en su totalidad como frontera, sin excepción alguna, mi Gobierno encuentra posible y apropiado proponer al de usted, cederle esas dos fracciones, siempre que sea á cambio de las únicas dos que por haber sido ya objeto de decisiones de los Comisionados de Límites continuarían, sin esta cesión, siendo americanas:—la llamada "Isla de San Elizario" y el Banco artificial de "El Horcón," las cuales ofrecerían á mi país una compensación conveniente.

Considera mi Gobierno que semejante permuta sería equitativa para ambas partes:—para los Estados Unidos "El Chamizal" y el "Bosque de Córdoba" representan un valor y una importancia capitales, pues están naturalmente incluidas dentro del área de una población en pleno y exhuberante desarrollo—El Paso, Texas,—y que necesita forzosomente de la adición de esas fracciones para perfeccionar su trazo y tráfico, pudiendo asegurarse que si ellas, llegaran á formar parte de El Paso, su valor alcanzaría en breve á varias decenas de millones de pesos. Para México, en cambio, la permuta sería conveniente por no poder ahora explotar de modo adecuado dichas dos fracciones, y poseer mayores en área y ventajosas en situación las que pretende se le cedan.

No podría alegarse como inconveniente para la transacción que el sentimiento público de cualquiera de los dos países se oponga á ello, pues ya se ha celebrado sin dificultad una semejante con los bajos del Río Bravo, cuya área total es superior á la aquí envuelta, sin que nadie haya encontrado la operación indecorosa ó antipatriótica. La única oposición podría creerse que nacería de los propietarios interesados en las tierras americanas; pero en el Banco del Horcón no existiría, supuesto que voluntariamente ofrecen sus dueños cederlo á los mexicanos que los tienén demandados, y en cuanto á los de la Isla de San Elizario, mi Gobierno entiende que estarían dispuestos á entrar en arreglos con los de Bosque de Córdoba y El Chamizal, para poder hacer la permuta ventajosamente para todos, cosa muy fácil de arreglar, dadas las condiciones del asunto.

Parece que usted propone que el Gobierno Mexicano ceda al de los Estados Unidos El Chamizal sin compensación alguna, pues tal vez opina que su nacionalidad no está aún decidida; pero, como se acaba de demostrar está quedará resuelta como mexicana con la simple aceptación del nuevo tratado, puesto que está fuera de duda y reconocido por ambos países que el Río Corría en 1853 por lo que se toma como límite Norte de ese terreno.

Se sirve usted proponer que sólo se exceptúen del nuevo pacto los terrenos cuya nacionalidad ya haya sido declarada internacionalmente, es decir: el Bosque de Córdoba, la Isla de San Elizario y el banco artificial del Horcón; pero debo repetir que México no podría ceder El Chamizal, que es una fracción más valiosa por sí sola que todas las que los Estados Unidos le ofrecerán en cambio si no se le diera por él una compensación apropiada, la que el decoro nacional exigiría que consitiera precisa y exclusivamente en tierras, y no en dinero ú otra comodidad alguna.

Es, por lo tanto, opinión de mi Gobierno que si se exceptúan de los efectos del nuevo tratado los terrenos de San Elizario y del Horcón, tendrían forzosamente que exceptuarse los de El Chamizal y el Bosque de Córdoba, el primero de los cuales (así como el Banco del Horcón) debería desde luego monumentarse con monumentos tipos en la forma usada en el Bosque de Córdoba. Podría ya entonces aplicarse el tratado á todo el resto del río, sin que tales excepciones le quitaran las inmensas ventajas que ofrece para lo presente y lo futuro; pero evidentímente estas no serán completas si no se prescinde en lo absoluto de toda excepción, haciendo á todo el actual curso del río línea divisoria entre las dos naciones.

En cuanto á las otras observaciones contenidas en la citada nota de usted, debo decir, refiriéndome á la que hace sobre la proposición segunda, que Mexico no intenta que se aplique sino á los cambios que usted llama "avulsivos," á los cuales se llama en el proyecto por "mutación de aluvion," por creer que éste es su verdadero nombre jurídico, no siendo realmente avulsivos sino los cambios que ocurren cuando la fuerza del río arranca una masa sólida de una de sus márgenes y la transporta y adhiere íntegramente á la otra, ó forma con ella una isla; pero en el fondo son idénticas las miras de ambos Gobiernos, y el mío no intenta sino lo que el de los Estados Unidos ahora propone sobre el particular.

Respecto á conservar como permanente á la Comisión de Límites Fluviales, dándole las nuevas facultades que dimanan del tratado, cree mi Gobierno que es completamente aceptable la idea, no siendo en realidad de adoptar, suprimiéndola, una economía que pudiera no ser más que aparente; así es que tampoco encuentra en ésto mi Gobierno que pudiera haber nada que objetar contra lo que usted propone como modificacion al plan propuesto por mí.

Con los fundamentos arriba ya expuestos, manifiesto a usted, por instrucciones especiales de mi Gobierno, que su idea fundamental al proponer un nuevo tratado de límites fué la de terminar por una vez la difícil y delicada cuestión de El Chamizal, mientras que de la nota de usted que ahora contesto se desprende; por una parte, que al aceptarse en principio el nuevo tratado, los Estados Unidos reconocen los derechos de México á la propiedad del Chamizal; por otra, el Departamento del digno cargo de usted declara que esta Nación no hará ninguna cesión de aquellos terrenos, cuyo dominio y propiedad se ha determinado formalmente y de manera definitiva, por lo que en tal caso no se cedería

á México la Isla de San Elizario, á cambio de nuestras tierras de El Chamizal.

Suplico á usted por lo tanto que, si no hay inconveniente para ello se sirva usted hacer esta aclaración á nombre de su Gobierno, para que después, si sin acceder al cambio propuesto, desea usted que se continúen las negociaciones del nuevo tratado, habrá que hacer abstracción en ellas del Chamizal, cuya nacionalidad mexicana quedará decidida por la simple y misma aceptación del principio en que se basará dicho tratado.

Termino haciendo referencia á la continuación por la Comisión Internacional de Límites Fluviales de los trabajos que previene el Artículo XIII del tratado para la eliminación de bancos, firmado en esta capital con fecha 20 de marzo de 1905, y tengo la honra de manifestarle que, de acuerdo con lo que se sirve usted proponer, ya mi Gobierno ha dado órden al Comisionado de México para que desde luego comience la monumentación de los cincuenta y ocho bancos eliminados—por aquel tratado, poniéndose previamente de acuerdo con su colega americano y recomendándole además, que se obtengan todos los datos que considere convenientes y de probable utilidad en lo futuro, para determinar el derecho de propiedad particular á los otros "bancos" que puedan estar situados en iguales condiciones, sin que á pesar de eso puedan decidir de una manera definitiva ningún caso que hasta ahora no esté formalmente decidido, á menos que reciban instrucciones dadas por ambos Gobiernos para eso efecto.

Me es grato renovar á usted, Excelentísimo señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY.

Excelentísimo señor ELIHU ROOT,

Secretario de Estado de los Estados Unidos de América.

Presente.

[Translation.]

No. 123. MEXICAN EMBASSY,

WASHINGTON, *December 12, 1908.*

Most excellent Sir:

Referring to the notes exchanged between this Embassy and your Department in regard to the negotiations for a new boundary treaty, and especially to your note No. 361 of October 22 last, I have the honor to state to you that, the Department of Foreign Affairs of my country having noted the contents of said note and a report on the subject having been received from the

Head of the Mexican Boundary Commission, my Government observes with pleasure that you accept as a fundamental principle of the new treaty the recognition by both Nations that at the present date, owing to the invariability of the fluvial dividing line proclaimed by the boundary treaty of 1853, the boundary between the two Nations has ceased to be along the real courses of the Colorado and Rio Grande rivers, which have almost completely changed from the position they occupied at that time, owing to a natural process of erosion and avulsion, as it is called, and that the proper remedy is the adoption by convention of the present actual courses of said rivers as a new international boundary, and of certain general rules applicable to their future changes so as to preserve forever, as far as possible, a natural geographical line as the boundary, which rules would be nothing more than the application or confirmation of those stipulated in the conventions of 1844[a] and 1905.

From the fact that your Department accepts our proposition "in principle" we may infer that it agrees that all lands now lying south of the course of the Rio Grande as it was in 1853 are Mexican, and that those to the north are American, with the exception of the monumented sections called "Bosque de Córdoba" and "Isla de San Elizario," and of the stretch of frontier comprised between Rio Grande City and the Gulf of Mexico, in which the dividing line has been adopted by mutual consent as lying, in the former two sections, along the series of monuments therein erected, and in the latter section along the actual course of the Rio Grande. It therefore follows that the tract of land called "El Chamizal" is recognized by the United States as Mexican.

Now then, the practical and advantageous aspect of the proposition made by my Government consists in seeking an agreement between the two countries for an exchange of tracts supposed to be approximately equivalent in importance and value, the object being, on the one hand, to conclude at once all pending controversies, and on the other to adopt now and maintain in future the natural course of the river as the dividing line, instead of the imaginary winding line deduced from the conventions in force.

However, inasmuch as the sections owned by Mexico include a very important tract, namely, that of El Chamizal, my Government is not willing that the latter shall be included in the general

[a The reference is clearly to the treaty of 1884.—Agent's note.]

exchange, because there is none among the American tracts which is equal to it and which would be received in exchange for it. Nevertheless, understanding how important it would be for the United States to own this section of the "Bosque de Córdoba" (already marked off as Mexican), and also how important it is to both Nations to adopt the running river throughout its length as the boundary without any exception, my Government considers it possible and proper to offer to cede these two sections to your Government in exchange for the only two which would otherwise continue to be American because they have already been decided upon by the Boundary Commissioners, namely, that called "Isla de San Elizario" and the artificial bar called "El Horcón," which two tracts would constitute a suitable compensation to my country.

My Government thinks that such an exchange would be fair to both parties. To the United States "El Chamizal" and the "Bosque de Córdoba" are of exceedingly great value and importance, since they are naturally included within the area of a flourishing and rapidly growing city, El Paso, Texas, which absolutely needs the addition of these sections of land in order to complete its outline and traffic, so that it may be set down as a certainty that if they should become a part of El Paso their value would soon reach several tens of millions of dollars. To Mexico, on the other hand, the exchange would be suitable for the reason that she is not at present able to utilize these two tracts adequately, while those she asks in exchange are larger in area and more favorably situated.

It could not be alleged as an objection to the compromise that public sentiment in either of the countries is opposed to it, for a similar one has been concluded without trouble regarding the bars (bajos) of the Rio Grande, the total area of which exceeds that here involved, and no one considered the transaction dishonorable or unpatriotic. It would seem that the only opposition likely to be raised would be on the part of the owners of the American lands, but this would not exist in the El Horcón bar, since its owners voluntarily offer to cede it to the Mexicans who have sued them, and as far as the lands of the Isla de San Elizario are concerned, my Government understands that the owners would be willing to enter into arrangements with the owners of the Bosque de Córdoba and El Chamizal in order that the exchange might be made to the advantage of all, which would be a matter easy to arrange in view of the circumstances of the case.

It appears that you propose the cession of El Chamizal by the Mexican Government to the United States without any compensation, perhaps because you think that its nationality is not yet decided; however, as has just been demonstrated, the nationality will be decided as being Mexican by the mere acceptance of the new treaty, since there is no doubt and it is acknowlegded by both countries that the Rio Grande ran in 1853 along what is considered as the northern boundary of this tract.

You propose that the only things excepted from the new compact be the lands whose nationality has already been declared internationally, namely, the Bosque de Córdoba, the Isla de San Elizario, and the artificial bar of El Horcón; but I must repeat that Mexico can not cede El Chamizal, which is a more valuable tract by itself than all those which the United States would offer in exchange, unless an adequate compensation were given for it, which the national honor would require to consist solely and exclusively of lands, and not of money or any other commodity.

It is therefore the opinion of my Government that if the lands of San Elizario and El Horcón are excepted from the effects of the new treaty, those of El Chamizal and the Bosque de Córdoba would necessarily have to be excepted also, El Chamizal (as well as El Horcón bar) being immediately marked off with standard monuments of the kind used in the Bosque de Córdoba. The treaty could then be applied to all the rest of the river, without these exceptions depriving it of the immense advantages which it offers for the present and the future; but obviously these advantages would not be complete unless absolutely all exceptions are avoided, thus making the whole present course of the river to serve as the boundary line between the two Nations.

As regards the other observations contained in your aforementioned note, I will say, in reference to your remark on the second proposition, that Mexico does not intend that it shall apply to any but changes which you designate as "avulsive," which are called in the project "changes by removal of alluvion," because it is thought that this is the correct legal term, the only changes which are avulsive being those which occur when the force of the river tears away a solid mass from one of the shores and transports it so that it adheres integrally to the other shore, or else forms an island of it; however, at bottom the views of both Governments are identical, and my own does not differ from what is now proposed by the United States.

With regard to permanently maintaining the River Boundary Commission and conferring new powers on it in accordance with the treaty, my Government considers the idea entirely acceptable, it being unwise to practice a merely apparent economy by abolishing the Commission. Thus in this matter also my Government does not think there could be any objection to what you suggest as a modification of the plan proposed by me.

On the basis of the foregoing I will state to you, by special instructions from my Government, that its underlying idea in proposing a new boundary treaty was to terminate at once the difficult and delicate question of El Chamizal, while from your note which I am now answering I gather, on the one hand, that in accepting the new treaty "in principle" the United States recognize the rights of Mexico to the ownership of El Chamizal; on the other hand, the Department under your worthy charge declares that the United States will not cede those lands whose dominion and ownership has been formally and definitely determined, so that in this event the island of San Elizario would not be ceded to Mexico in exchange for our lands of El Chamizal.

I therefore beg of you, if there is no objection, to kindly make this explanation in the name of your Government, so that if you wish the negotiations on the new treaty to be continued afterwards without agreeing to the proposed exchange, it will be necessary to exclude El Chamizal from these negotiations, since this tract will be decided to be of Mexican nationality by the mere acceptance of the principle on which the treaty is to be based.

I will conclude by making reference to the continuance by the International River Boundary Commission of the work contemplated in Article XIII of the treaty for the elimination of bars, signed in this city on March 20, 1905, and I have the honor to state to you that, in accordance with what you are pleased to propose, my Government has already given orders to the Mexican Commissioner to begin immediately the work of placing monuments on the 58 bars eliminated by that treaty, after first coming to an agreement with his American colleague, and directing him besides to obtain all the data he may deem suitable and of probable utility in the future in order to determine the private property rights to the other bars ("bancos") which may be situated under similar conditions; however, they shall not definitely decide

any case which has not yet been formally decided, unless they receive instructions to this effect from both Governments.

I take pleasure in renewing, etc.

JOSÉ F. GODOY.

His Excellency,
Mr. ELIHU ROOT, etc.

Mr. Bacon to Señor Godoy.

Serial No. 394.

DEPARTMENT OF STATE,
WASHINGTON, *December 22, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 123, of the 12th instant, in which, referring to previous correspondence, especially to the Department's note No. 361, of October 22 last, on the subject of the desired early settlement of the water boundary questions pending between the United States and Mexico, you propose the transfer by Mexico to the United States of El Chamizal tract and the Bosque de Cordoba, in exchange for the banco of El Horcon and Isla de San Elizario.

You add that your Government is in favor of maintaining permanently the International Boundary Commission, and of conferring new powers on it in accordance with the treaty; and that the Mexican Commissioner has been instructed to begin immediately the work of placing monuments on the 58 bancos eliminated by the treaty of March 20, 1905, after first coming to an agreement with his American colleague.

In reply I have the honor to say that your note is receiving the Department's consideration and that it will afford the Department pleasure to reply thereto in due time.

Accept, Sir, the renewed assurance of my high consideration.

ROBERT BACON,
Acting Secretary.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

WASHINGTON, *Abril 6 de 1909.*

No. 205.

Excelentísimo Señor:

Con fecha 21 de Mayo del año próximo pasado, la Embajada de mi cargo tuvo el honor de dirigirse á ese Departamento, proponiéndole las bases para un tratado de límites entre los dos países, que fué aceptado en principio por el Gobierno de los Estados Unidos de América, en nota de 22 de Octubre. En 12 de Diciembre, la Embajada remitió otra nota insistiendo en la conveniencia de celebrar cuanto antes el tratado y dando á conocer su opinión sobre la manera de conciliar la primitiva proposición de México y las indicaciones contenidas en la nota del Sr. Secretario de Estado Root.

Como en el presente mes se renueva el período de vistas de la Suprema Corte de los Estados Unidos, sobrevendrán de seguro las dificultades entre los residentes mexicanos del Chamizal y la testamentaría de Cotton y otros muchos puntos tocantes al señalamiento de la línea fronteriza, trayendo como consecuencia un gran perjuicio á los intereses de ambos gobiernos y la incertidumbre en lo que se refiere ó las propiedades de los particulares.

Por esa razón me permito insistir ante V. E., suplicándole se digne prestar su consideración, lo más brevemente que sea posible al tratado en proyecto, á fin de que queden concluidas estas disputas y dificultades, se fije una línea que separe á los dos países perpetuamente y se señale la manera de zanjar tan enojosas disputas en lo sucesivo.

Aprovecho esta oportunidad, Excelentísimo Señor, para reiterarle las seguridades de mi más alta consideración.

F. L. DE LA BARRA.

Excelentísimo Señor
PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,
WASHINGTON, *April 6, 1909.*

No. 205.

Most Excellent Sir:

Under date of May 21 of last year the Embassy under my charge had the honor to address to your Department a proposition containing the bases for a Boundary Treaty between the two countries which the Government of the United States accepted in principle by note dated October 22. On the 12th of December the Embassy sent another note urging the advisability of concluding the treaty as soon as possible and expressing its views as to the way of reconciling Mexico's original proposition with the suggestions made in the note of Secretary of State Root.

As the Supreme Court of the United States is to resume its session this month, the differences between the Mexican residents of El Chamizal and the Cotton Estate and many other points connected with the demarkation of the boundary line will surely crop out, involving great prejudice to the interests of both Governments and uncertainty as to private property.

I therefore permit myself to press upon Your Excellency my request that you deign to take the proposed treaty into consideration at the earliest possible date so that these disputes and difficulties may be brought to a final end, a line be determined which will divide the two countries for ever, and a method devised to settle such vexatious differences in the future.

I avail myself of this opportunity Most Excellent Sir, to renew to you the assurances of my highest consideration.

(Signed) F. L. DE LA BARRA.

Mr. Knox to Señor de la Barra.

No. 78. DEPARTMENT OF STATE,
WASHINGTON, *July 28, 1909.*

Excellency:

Referring to previous correspondence, especially to the Mexican Embassy's note No. 203, of May 21, 1908, the Department's reply, note No. 361, of October 22, 1908, and the Embassy's rejoinder, note No. 123, of December 12, 1908, in regard to the boundary dispute concerning the title to the Chamizal tract, I have the honor to say that it will be recalled that the Department in the opening

sentence of its note of October 22nd observed that it was in some doubt as to the precise scope of the proposition contained in the Embassy's note of May 21, 1908, adding, however, that the Department agreed in principle with what it understood to be the general underlying idea of the Mexican proposition, namely, the simplification of the boundary line through the adoption, so far as possible, of the present course of the Rio Grande as the international boundary. The Department pointed out that it deemed it important that there should be no exceptions to this principle, unless it be "as to tracts the sovereignty of which has already been formally and finally determined."

After a careful consideration of the Embassy's note of December 12, 1908, it appears that, as was feared and as the Department indicated in its note of October 22nd, the Department did not fully understand the underlying principle of the Embassy's note of May 21, 1908, as now explained in the Embassy's note of December 12th, from which it would seem that the Embassy maintains that "all lands now lying south of the course of the Rio Grande as it was in 1853 are Mexican, and that those to the north are American," with certain exceptions, and that it therefore follows that El Chamizal is of right Mexican because it lies south of the boundary as it was in 1853. Starting from this premise, the Embassy proposes a readjustment of the boundary line through a mutual exchange of El Chamizal and Bosque de Cordoba for the Isla de San Elizario and the artificial bar of El Horcón.

As the Department understands this proposition of exchange, it is one worthy of the most careful consideration on the part of this Department, once the Embassy's premise is granted, namely, that the present boundary line is of right the channel of the Rio Grande as it was in 1853, and, therefore, El Chamizal is admittedly Mexican. The Department is, however, unprepared to accept the Embassy's premise, which appears to it entirely inconsistent with the course of the two governments during many years, and particularly with the attitude of the Mexican Government toward the Chamizal case when it was before the Boundary Commission in 1895.

In the light of these considerations the Department confesses its surprise at the position which is now assumed by the Mexican Embassy in regard to this question.

In view of what the Department is constrained to believe to be the novelty of the position assumed by the Embassy and in view

of its vital importance as affecting the reasonableness and expediency from the point of view of this Government, of the exchange which the Embassy has proposed, the Department feels justified in suggesting that it would be glad to be informed of the basis of the Embassy's contention "that all lands now lying south of the course of the Rio Grande as it was in 1853 are Mexican, and that those to the north are American," with certain exceptions, and that therefore the Chamizal tract is Mexican territory, irrespective of whether the formation of the tract was the result of accretion or avulsion.

The question which has been raised by the Embassy is of such vital importance not only to the just and equitable settlement of the dispute between the two governments with regard to the Chamizal tract, but also to the whole question of the negotiation of a new international boundary treaty, that the Department deems it most judicious to await the response of the Embassy before undertaking to make further reply to the Embassy's note of December 12, 1908.

Accept, Excellency, the renewed assurance of my highest consideration.

P. C. KNOX.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *15 de enero de 1910.*

N°. 469.

Excelentísimo Señor:

Con muy cuidadoso interés me impuse del contenido de la nota de ese Departamento, número 78, de 28 de julio del año próximo pasado, en la que Vuestra Excelencia expresa el deseo de que esta Embajada aclare y funde el principio que sirve de base á la proposición del Gobierno Mexicano, contenida en la nota número 203, de 21 de mayo de 1908, para una nueva Convención de Límites Fluviales, contestada en sus puntos fundamentales por el Departa[illegible]en su nota número 361, de 21 de octubre del mismo año.

El Departamento no acepta la proposición que sirve de base al proyecto mexicano, es á saber: que las tierras situadas al sur de la línea que corresponde al curso del Río Bravo en 1853, son mexicanas, y que las que se encuentran al norte de dicha línea son americanas, con excepción de los tórrenos cuya soberanía haya sido reconocida á favor de alguno de los dos países de una manera formal y definitiva.

Vuestra Excelencia manifiesta sorpresa por la adopción de ese principio que, según opina el Departamento, está en oposición con el criterio seguido por los dos Gobiernos en los últimos años y, especialmente, por el de México en la discusión del caso de El Chamizal, en la Comisión de Límites, en 1895.

Por último, Vuestra Excelencia reduce el alcance de la aprobación que en principio dió ese Departamento á la proposición mexicana, limitándolo al reconocimiento de la conveniencia de celebrar un nuevo Tratado, que adoptase, en cuanto fuera posible, el curso actual del Río Bravo como línea divisoria entre los dos países, sin más excepciones que las relativas á los terrenos cuya soberanía hubiera sido reconocida plenamente.

En respuesta, me permito manifestar á ese Departamento que el principio que sirve de base á la proposición del Gobierno de México, no sólo está conforme con las enseñanzas del Derecho Internacional, sino que ha sido sostenido y aplicado por el Departamento de Estado y por la Suprema Corte de Justicia de los Estados Unidos. La doctrina que lo funda ha servido de base, además, para las negociaciones entre los dos Gobiernos, en casos concretos, resueltos por la aplicación de ese principio. Así tendré el honor de demostrarlo á Vuestra Excelencia en el curso de esta nota, con la esperanza de que desaparezca el motivo de sorpresa que se ha servido manifestar.

Expondré brevemente algunas consideraciones relativas á los antecedentes del caso. El Tratado de Paz y de Límites de Guadalupe Hidalgo, de 1848, y el de Límites de la Mesilla, de 1853, fijaron como parte de nuestra frontera con los Estados Unidos el centro del curso del Río Bravo ó Grande, desde donde corta el lindero meridional de Nuevo México hasta su desembocadura en el Golfo de México. Convinieron además dichos Tratados—según las Actas anexas á ellos, que forman parte suya y que tienen su mismo valor—en que la línea divisoria establecida entre las dos Repúblicas, siguiendo el centro del curso de los ríos mencionados en dichos pactos, se consideraría como *línea invariable y fija.*

Sabido es que los Tratados de Guadalupe y de la Mesilla crearon una Comisión Internacional con poderes amplios para demarcar sobre el terreno la línea divisoria convenida. Según lo pactado, los comisarios debían hacer constar sus decisiones en actas que quedarían anexas á los Tratados, y cuyas estipulaciones, en lo relativo á la posición de la línea, tendrían y han tenido desde entonces y conservan hoy igual fuerza internacional que los Tratados mismos, los cuales no pueden ser modificados sin el consentimiento expreso y libre de ambos Gobiernos, otorgado de conformidad con los principios del derecho de gentes y con arreglo á la Constitución de cada país, respectivamente.

Como una de las consecuencias directas de este acuerdo, hay que reconocer, y así lo han reconocido los dos Gobiernos—según se verá mas adelante—que la frontera quedó *fijada* de tal manera, que el cambio de curso del Río Bravo ó Grande en nada la afectaría, cualquiera que fuese la causa de dicho cambio.

Así las cosas, se acordó en 1884 celebrar una Convención, que estableciera ciertas reglas aplicables en lo futuro á los ríos internacionales.

Para determinar el alcance de la aplicación de los principios consignados en las Convenciones de 1884 y de 1905, permítame Vuestra Excelencia que establezca ciertos hechos que son indispensables para el cabal conocimiento y resolución del caso. Puede considerarse dividido el Río Bravo en tres zonas: la alta, comprendida entre la intersección de su curso con el lindero meridional de Nuevo México y la entrada del primer gran cañon, un poco abajo de Presidio del Norte, en Chihuahua; la media, desde este punto hasta la salida de la región de los grandes cañones, entre Laredo y Río Grande City, Texas, y la baja, desde la terminación de la zona media hasta la desembocadura en el Golfo de México. En las regiones alta y baja el río corre con pendiente y régimen torrenciales al través de valles de aluvión, lo que hace inestable su curso, sujeto á constantes variaciones. En la zona media, de los grandes cañones, su curso es fijo.

Lógicamente se deduce de los datos expuestos, que las prescripciones de la Convención de 1884 no eran aplicables directamente á las zonas primera y tercera del Río Bravo, en las regiones en que éste hubiera cambiado de curso, pues la frontera *invariable y fija* determinada por el Tratado de 1853 no coincidía ya con el curso del río en 1884.

La situación de la línea divisoria en los años transcurridos de 1853 á 1884 está claramente determinada por el primero de los

pactos citados. Fijada por los comisionados de común acuerdo y siguiendo el curso del río, el cambio de corriente de éste en nada afectaba la frontera determinada, cualquiera que fuera la causa de tal cambio. Es decir, de 1853 á 1884—y así hay que considerarlo desde esta fecha hasta hoy, según demostraré—*todas las tierras que quedaban al norte de la línea divisoria fijada por los comisionados conforme al Tratado de 1853, eran y son americanas y todas las situadas al sur de dicha línea eran y son mexicanas.*

Las prescripciones de la Convención de 1884 sólo podían ser aplicables á los casos que en lo futuro se presentaran; pero no á los anteriores, porque á éstos les debía ser aplicada la regla que estableció el Tratado de 1853. El curso del río había dejado de ser internacional en algunas porciones, aunque subsistía para los dos países la obligación de mantener la libre navegación de él.

No debo entrar á la consideración de los efectos retroactivos que el Derecho Internacional reconoce en algunos casos, como en los tratados de extradición, por ejemplo. La Convención de 1884 no pudo ni puede ser aplicada, lo mismo que la de 1905, á los casos anteriores á la primera de estas dos fechas, los que fueron normados por el Tratado de 1853. Así lo imponen las opiniones de los tratadistas más distinguidos de Derecho Internacional y las prácticas seguidas por las Cancillerías y así también lo han reconocido de una manera explícita é inequivoca los Gobiernos Americano y de México. La doctrina que consagra ese principio ha sido aceptada por los Procuradores Generales de este país y aplicada por la Suprema Corte de Justicia de los Estados Unidos.

La substitución de alguna de las cláusulas de un convenio por las del que posteriormente se ha celebrado en nada puede invalidar ó destruir los derechos creados por el primero, á no ser que expresamente se convenga en ello en el nuevo pacto. "Si un tratado ú otra ley, dice Wheaton, ha producido su efecto, creando un derecho, la terminación del tratado ó la abolición de la ley no pueden extinguir tal derecho." (Wheaton's Rep., vol. II, pág. 277.) Esta doctrina la expone y sostiene el autor que cito, en la página 461 de sus "Elements of International Law", segunda edición anotada por Lawrence.

El Tratado de 1853, al determinar que el curso del Río Bravo en esa época marcara la línea divisoria fija é invariable, dió lugar á la creación de derechos que los Gobiernos de México y de los Estados Unidos han reconocido. Creados esos derechos, la duración del Tratado no puede ya tener influencia en ellos: la

terminación ó la vigencia posterior del pacto internacional no tiene importancia en el caso, dice en términos precisos el autor americano que he citado.

Una decisión de la Suprema Corte de Justicia de los Estados Unidos, mencionada por Mister John Bassett Moore, reconoce que los derechos de soberanía y dominio que una nación ha adquirido sobre un territorio, en virtud de cesión por medio de un pacto, se oponen á que sean disminuidos ó destruidos en lo futuro. México y los Estados Unidos convinieron en 1853 en que el curso que entonces tenía e Río Bravo fuera la frontera invariable y fija, y como consecuencia de ese pacto, las tierras situadas al norte de dicha línea fueron consideradas como americanas y las que se encontraban al sur, mexicanas. Se crearon así derechos que no podrán ser desconocidos por el Gobierno Americano, pues él mismo ha aplicado esa regla.

En una nota del Honorable Mister Bayard, Secretario de Estado, á Mister Bowen, decía el 12 de junio de 1886, refiriéndose al artículo V del Tratado de Guadalupe Hidalgo: "Debe agregar que se ha considerado en este Departamento que cuando por el cambio de canal del Río Grande se modifique la distancia de una isla á la orilla, *la línea fijada por los Comisionados conforme al Tratado, debe ser considerada, sin duda alguna, conforme al dibujo original*". Me permito llamar la atención de Vuestra Excelencia, no sólo á la precisión de los términos empleados—que coinciden con los que sirven de base á la proposición mexicana—sino á la fecha de la nota, escrita dos años después de firmada la Convención de 1884.

El caso de la isla de Morteritos ó del Castor dió motivo á un cambio de notas entre los dos Gobiernos, que no deja lugar á dudas. El Honorable señor Frelinghuysen, Secretario de Estado, en nota que dirigió el 10 de julio de 1884 al señor don Matías Romero, Ministro de México en Washington, le dice textualmente: "El Gobierno de los Estados Unidos considera establecida su jurisdicción sobre la isla de Morteritos ó del Castor, tal como lo determinó la Comisión de Límites, bajo el Tratado de Guadalupe Hidalgo". El señor Romero, al contestar esa nota el 9 de octubre del mismo año, reconoce, en nombre del Gobierno de México la justicia de la aserción del Honorable señor Frelinghuysen. "Como esta es la base presentada por el Gobierno de los Estados Unidos para defender sus derechos sobre esa isla (la de Morteritos), se reconoce, por lo tanto, que los límites entre las dos repúblicas, son aquellos señalados por el Tratado de Guadalupe Hidalgo, tal como fueron fijados por la Comisión Mixta, sin haber sido

alterados por los cambios producidos por la corriente del río, ya sea en sus orillas ó en lo más profundo de sus canales".

Un día más tarde, es decir, el 11 de julio de 1884, el mismo Secretario de Estado decía al señor Morgan, Ministro en México, lo siguiente: ". . . porque aun en el caso de que la isla de Morteritos fuera territorio mexicano, lo que el registro de la oficina agrimensora señala no ser así, la *anexión de territorio de los Estados Unidos por acrecentamiento ó por desviación del canal, no puede ser reconocida*," y más adelante: ". . . En virtud de todas estas circunstancias, pida usted inmediatamente al Gobierno Mexicano . . . que haga que se respete debidamente tanto la línea limítrofe del sur de esa isla como la que se halla entre ésta y el "banco" mexicano, tal como se determinó los comisionados de límites de los Estados Unidos y México." Citado por Wharton, "International Law Digest," tomo I, pág. 91, de la segunda edicion.

Permítame Vuestra Excelencia que le haga notar que la opinión del comisionado de México acerca del caso de El Chamizal en 1895, de la que se hace mención en la nota que contesto, no expresa sino el parecer de un alto empleado de nuestro Gobierno, sin haber recibido la sanción oficial de éste. Sabido es que la vista del caso de El Chamizal mostró un desacuerdo completo entre los comisionados americano y mexicano, lo que obligó á que el estudio del asunto pasara al terreno diplomático. Esta observación determina el verdadero alcance de la opinión expresada por nuestros comisionado, que no influyó en la resolución del caso ni obtuvo la aprobación de nuestro Gobierno, lo que le quita toda significación internacional á dicho parecer, cuya importancia es nula para la solución de los casos pendientes.

Puede además verse en la correspondencia que precedió á la celebración del Tratado de 1884—enviada al Senado por el señor Presidente de los Estados Unidos—que México mantuvo constantemente la invariabilidad de la línea de 1853. Esta circunstancia me permite de nuevo afirmar—por la comparación de esa doctrina con la opuesta, que adoptó, el Tratado de 1884—que el espíritu que dominó en las negociaciones de éste fué el de que sus prescripciones se aplicaran á los casos que en lo futuro pudieran presentarse, por cambios posteriores en los ríos limítrofes, y no á los habidos antes, que serían juzgados según la primitiva doctrina de la invariabilidad.

Podría aumentar citas y exponer argumentos y nuevas pruebas que justifican la base adoptada por el Gobierno Mexicano para la proposición que ha hecho al de los Estados Unidos con objeto de

celebrar un nuevo Tratado; pero considero que lo expuesto es suficiente para el objeto de esta nota.

El Gobierno de México propuso al de los Estados Unidos la conclusión de un nuevo acuerdo internacional, por las ventajas inherentes á las fronteras naturales, determinando ciertos principios para el caso de que por aluvión ó de mutación de álveo hubiera un cambio en el curso de los ríos internacionales que produjera la formación de bancos de una extensión no menor de cuatrocientas hectaras, y reconociendo que las islas de formación anterior á 1853 conservarían la nacionalidad que de una manera expresa y precisa se les hubiera reconocido. Para evitar las dificultades existentes se proponía, por último, que pasaran á ser mexicanos los terrenos llamados El Horcón y la isla de San Elizario y americanos El Chamizal y el Bosque de Córdoba, haciendose así un canje de terrenos de extensión aproximadamente igual, y lográndose la ventaja de que la línea divisoria quedara constituida, como antes digo, por una frontera natural.

Los fundamentos expuestos y la consideración de las ventajas que se obtendrían con el pacto, movieron seguramente al Honorable señor Root, en nombre de su Gobierno, "á aceptar en principio el proyecto propuesto por el Gobierno Mexicano," "The Department *agrees in principle* with the project as proposed by you. . . . ", como dice literalmente en su nota de 22 de octubre de 1908.

Mi Gobierno no se limitó á hacer la proposición para el nuevo Tratado, sino que en la nota de esta Embajada, de 12 de diciembre último, y en la que tuve el honor de dirigir á Vuestra Excelencia el 6 de abril del año actual, ha insistido en sus proposiciones para llegar á un acuerdo definitivo.

El Gobierno de México tiene expuesto en lo que precede el fundamento legal y sólido en que basa su proposición de nuevo Tratado, y espera haber llevado con ello el convencimiento á la mente del Gobierno de los Estados Unidos; pero si por desgracia no fuere así, sino que el Departamento de Estado continuare creyendo lo contrario que el de Relaciones de México, respecto á la interpretación que debe darse á los Pactos de Límites de 1848 y 1853, en su relación con el caso de El Chamizal, entonces el Gobierno de México se apresuraría á proponer al de los Estados Unidos, y así lo hace desde ahora para tal evento, que se sometiera sin tardanza á arbitraje el repetido caso de El Chamizal y con él la diferencia de opinión de ambos Gobiernos á que se viene haciendo referencia.

Aprovecho esta ocasión para reiterar á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado
de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,
No. 469. WASHINGTON, *January 15, 1910.*

Most Excellent Sir:

I have with great care and interest acquainted myself with the contents of your Department's note No. 78 of July 28 of last year in which Your Excellency expresses the desire to have from this Embassy the explanation and basis of the principle upon which rests the Mexican Government's proposition contained in note No. 203 of May 21, 1908, relative to a new water boundary convention, the main points of which were answered by the Department in its note No. 361 of October 21 of the same year.

The Department does not accept the proposition on which the Mexican project is based, namely: that all lands south of the line marked by the course of the Rio Grande in 1853 are Mexican and all those north of that line are American, except those over which the sovereignty of either country may have been recognized in a formal and final manner.

Your Excellency evinces surprise at the adoption of that principle which, in the Department's opinion, is inconsistent with the course pursued by both Governments in late years and, particularly by that of Mexico in the discussion of the El Chamizal case by the boundary Commission in 1895.

Finally Your Excellency restricts the scope of the approval given in principle by the Department to the Mexican proposition by limiting it to an admission that it would be expedient to conclude a new Treaty adopting, as far as possible, the present course of the Rio Grande as the boundary line between the two countries without other exceptions than those bearing on lands whose sovereignty shall have been fully recognized.

In reply I venture to say to your Department that the principle on which the Government of Mexico bases its proposition not only is consistent with the tenets of International law but has been

upheld and applied by the Department of State and the Supreme Court of the United States. The doctrine on which it rests has further been taken as the basis of negotiations between the two Governments respecting specific cases that have been determined by applying that principle. I shall have the honor to demonstrate this to Your Excellency in the course of this note, hoping to remove the cause for the surprise you were pleased to express.

I will briefly present a few remarks concerning the antecedents of the case. The treaty of Peace and Limits of Gaudalupe Hidalgo of 1848 and the Boundary Treaty of La Mesilla of 1853 defined as part of our boundary with the United States the middle of the stream of the Rio Bravo or Grande from the point where it intersects the south boundary of New Mexico to its disemboguement into the Gulf of Mexico. It was further agreed in the said treaties—according to the Acts annexed thereto which form part of the said Treaties and have the same force—that the boundary line established between the two Republics along the middle of the streams of the rivers mentioned in the said covenants would be considered an *invariable and fixed line.*

It is known that the Treaties of Guadalupe and La Mesilla created an international commission with ample powers to mark out upon the land the dividing line agreed to. As stipulated, the commissioners were to record their decisions in acts to be annexed to the Treaties the clauses of which, as far as the position of the line was concerned, were to have, have had since then and now have the same international force as the treaties themselves, which cannot be modified without the consent of both Governments expressly and freely given in conformity with the principles of the law of nations and in accordance with the Constitution of each country respectively.

It must be admitted—and both Governments have admitted—as will be shown hereinafter—that one of the direct consequences of that agreement is that the boundary was *fixed* in such a manner that it could in no wise be affected by a change in the course of the Rio Bravo or Grande, no matter what the cause might be.

In this state of affairs, it was agreed in 1884, to conclude a Convention which would lay down certain rules applicable to international streams in the future.

In order to determine the range of the principles enunciated in the Conventions of 1884 and 1905, Your Excellency will permit me to establish certain facts that are indispensable for the precise knowledge and settlement of the case. The Rio Grande may be

considered as being divided into three zones: the upper one, between its intersection with the South boundary of New Mexico and the point where it enters the first great canyon, a little below Presidio del Norte, in Chihuahua; the middle zone, thence to the point where it comes out of the great canyon region, between Laredo and Rio Grande City, Texas, and the lower one from the end of the middle zone to the disemboguement into the Gulf of Mexico. In the upper and lower regions, the river runs torrent like across alluvium valleys, whereby its course is made unstable and subject to constant variations. In the middle zone, that of the great canyons, its course is steady.

The logical deduction from the foregoing data is that the provisions of the Convention of 1884 were not directly applicable to the first and third zone of the Rio Grande, in those regions where its course had changed, since the *invariable and fixed* boundary line determined by the treaty of 1853 already deviated from the course of the river in 1884.

The position of the dividing line during the period from 1853 to 1884 is clearly determined by the first of the Conventions named. Having been jointly established by the Commissioners along the channel of the river, the line so established was in no wise affected by a change in the course of the river, whatever might be the cause of such a change. That is to say, from 1853 to 1884—and it should, as I will show, be so held from that to this date—*all lands north of the dividing line established by the Commissioners in conformity with the treaty of 1853, were and remain American and all those south of that line are and remain Mexican.*

The provisions of the Convention of 1884 could only be applicable to cases which might arise subsequently; but not to those which had occurred before, because they came under the rule stipulated in the treaty of 1853. The stream had ceased, in some parts, to be international, although the obligation of both countries to maintain its free navigation still subsisted.

I need not enter into a consideration of the retroactive effects which international law recognizes in some cases, as, for instance, in extradition treaties. The Convention of 1884 could not and cannot, like that of 1905, be applied to cases, antecedent to the first of those two dates, which were regulated by the treaty of 1853. So say the opinions of the most distinguished writers on International Law and the practice followed by the Chancellors; so, also,

have the American and Mexican Governments admitted in an explicit and unmistakable manner. The doctrine which that principle sanctions has been accepted by the Attorneys General of this country and enforced by the Supreme Court of the United States.

That some of the clauses of a convention has been superseded by the provisions of a subsequent treaty, cannot in the least impair or destroy rights created by the first instrument, unless there be an express agreement to that effect in the later compact. "If a treaty or other law," says Wheaton, "has produced its effect by creating a right, the termination of the treaty or the repeal of the law cannot extinguish that right." (Wheaton's Rep. Vol. II, p. 277). This doctrine is expounded and upheld by the writer I have just cited on page 461 of his "Elements of International Law" Second Edition annotated by Lawrence.

The treaty of 1853, in deciding that the course of the Rio Grande at that time should mark the *fixed* and invariable dividing line, gave birth to rights which the Governments of Mexico and the United States have recognized. The rights having been created, the duration of the treaty cannot now affect them: the termination or the subsequent force of the international pact is without importance in the case, says in precise terms the American writer I have cited.

A decision of the Supreme Court of the United States, mentioned by Mr. John Bassett Moore, recognizes that the rights of sovereignty and dominion acquired by a nation over a territory through cession by virtue of a treaty are not to be curtailed or destroyed thereafter. Mexico and the United States agreed in 1853 that the course of the Rio Grande at that time should be the *fixed* and invariable boundary, and as a consequence of that convention the lands lying north of the said line were considered to be American and those south thereof Mexican. Rights were thus created which cannot be disregarded by the American Government for it has itself applied that rule.

In a note of June 12, 1886, to Mr. Bowen the Honorable Mr. Bayard, Secretary of State, referring to Article V of the Treaty of Gaudalupe Hidalgo, said: "It may be proper to add that it has been held in this Department that when, through the changing of the channel of the Rio Grande the distance of an island from the bank has been changed, *the line adjusted by the commissioners under the treaty is to be considered, without any doubt, as shown in the original drawing.* I beg leave to draw Your Excellency's attention not only to the precision of the terms used—which agree

with those on which the Mexican proposition is based—but also to the date of the note written two years after the signature of the Convention of 1884.

The case of the island of Morteritos, otherwise Castor island, gave occasion for an exchange of notes between the two Governments which leaves no room for doubt. The Honorable Mr. Frelinghuysen in a note addressed on July 10, 1884 to Señor Don Matias Romero, Minister of Mexico at Washington, said, word for word, as follows: "The Government of the United States regards its jurisdiction over the island of Morteritos, otherwise Beaver island, as established by the boundary commission under the treaty of Guadalupe Hidalgo." Mr. Romero, in his reply, dated October 9 of the same year, to that note recognized, in behalf of the Government of Mexico, the justice of the position taken by the Honorable Mr. Frelinghuysen: "As this is the basis presented by the Government of the United States to defend its rights to that island (Morteritos), it is therefore recognized that the limits between the two Republics are those indicated by the Treaty of Guadalupe Hidalgo as determined by the Mixed Commission without being affected by the changes caused by the current of the river whether on its banks or in its deepest channel."

On the following day, that is to say the 11th of July 1884, the same Secretary of State wrote to Mr. Morgan, Minister to Mexico as follows: " * * * for even if Morteritos island were Mexican, which the record of the survey shows it is not, the annexation of United States territory by accretion or by change of channel could not be recognized," and further on: " * * * Under all these circumstances you will ask the Mexican Government forthwith * * * to cause to be duly respected the boundary line both to the south of that island and between it and the Mexican "banco" as determined by the United States and Mexican boundary commissioners." Quoted by Wharton International Law Digest, Vol. I, p. 91, Second Edition.

Your Excellency will permit me to invite your attention to the fact that the Mexican Commissioner's opinion touching the El Chamizal case in 1895, mentioned in the note under reply, is nothing but an expression of the views of a high official of our Government without its official sanction. It is well known that the examination of the El Chamizal case elicited a complete disagreement between the American and Mexican Commissioners which made it necessary to transfer the examination of the matter to diplomatic agencies. This remark determines the true import

of the opinion expressed by our Commissioner which had no weight in the solution of the case and failed to obtain the approval of our Government, whereby the said views, which are wholly unimportant as to the settlement of the pending cases, are stripped of any international significance.

The correspondence which led to the conclusion of the Treaty of 1884, and was sent to the Senate by the President of the United States, further shows that Mexico constantly stood for the invariability of the 1853 line. This circumstance enables me again to assert—by comparing that doctrine to its opposite which the Treaty of 1884 adopted—that the prevailing intent in the negotiations of the last named treaty was that its provisions should apply to cases which might arise in the future through subsequent changes in the coterminous waters and not to those that had occurred before and should be determined according to the original doctrine of invariability.

I might adduce further quotations, advance other arguments and offer fresh evidence in support of the ground taken by the Mexican Government for the proposition it has submitted to the Government of the United States in regard to the conclusion of a new treaty; but I deem the foregoing sufficient for the purposes of this note.

The Government of Mexico proposed to that of the United States a new international agreement, in consideration of the advantages that go with a natural boundary, establishing certain principles to meet the case of a change in the course of international waters caused by alluvion or a change of bed and resulting in the formation of "bancos" not less than four hundred hectares in area, and recognizing that islands formed prior to 1853 should conserve the nationality that had in a precise and expressed manner acknowledged to be theirs. In order to avoid existing difficulties it was further proposed that the land known as "El Horcon" and San Elizario island would become Mexican and El Chamizal and Bosque de Cordoba American, thus effecting an exchange of land approximately equal in area and affording the advantage of having the boundary line marked, as above stated, by a natural border.

The Honorable Mr. Root was surely moved by the reasons herein set forth and a consideration of the advantages to be derived from the agreement to accept, in principle, in the name of his Government, the project proposed by the Mexican Government. "The Department *agrees in principle* with the project

as proposed by you * *" are the very words used in his note of October 22, 1908.

My Government did not confine itself to making the proposition for a new Treaty but, by this Embassy's note of December 12 last and that which I had the honor to address to Your Excellency of April 6 of this year, urged its propositions to arrive at a final agreement.

The Government of Mexico has set forth in the foregoing the legal and substantial foundation upon which it bases its proposition for a new treaty and hopes to have thereby brought conviction to the mind of the Government of the United States; if it should unfortunately be otherwise, if the Department of State should continue to entertain an opinion opposite to that of the Ministry of Foreign Relations of Mexico, in regard to the interpretation to be given to the Boundary Treaties of 1848 and 1853 as affecting the "El Chamizal Case", the Government of Mexico would then, and such being the case does now, propose at once that the aforesaid "El Chamizal" case and with it the divergence of opinion between the two Governments hereinabove adverted to, be referred to arbitration without delay.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

Mr. Knox to Señor de la Barra.

DEPARTMENT OF STATE,
No. 172. WASHINGTON, *January 29, 1910.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 469, of the 15th instant, in which, referring to the Department's note No. 78, of July 28th last, and to other correspondence, you present a statement of the reasons and principles upon which the Mexican Government bases the proposition contained in the Mexican Embassy's note No. 203, of May 21, 1908, relative to a new water boundary convention, and you propose that, in the event that the Government of the United States does not concur in the views expressed by you, the questions at issue be arbitrated.

In reply I have the honor to say that your note is receiving the attentive consideration of the Department.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, 1° *de marzo de 1910.*

N°. 521.

Excelentísimo Señor:

De acuerdo con lo convenido en la entrevista que ayer tuve con Vuestra Excelencia relativa al nuevo Tradado de Límites Fluviales propuesto por México, me he dirigido á mi Gobierno para indicarle que ese Departamento de Estado, animado por el espíritu de justicia que norma todos sus actos, conviene en que se precisen las condiciones del statu quo en El Chamizal, en el sentido de que ninguna acción de orden judicial ó administrativo pueda ejecutarse en el terreno en cuestión, en tanto que no queden completamente definidos los términos del nuevo Tratado.

Determinadas así las condiciones del statu quo ón El Chamizal, quedo en espera del aviso que para continuar la discusión del proyecto de Tratado, Vuestra Excelencia se sirva darme.

Aprovecho esta oportunidad, Excelentísimo Señor, para renovarle las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado
de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA

WASHINGTON, *March 1, 1910.*

No. 521.

Most Excellent Sir:

As agreed at the interview I had with Your Excellency in respect to the new Water Boundary Treaty proposed by Mexico, I have written to my Government to report that your Department of State animated by the spirit of justice which governs all its acts agrees that the conditions of the *statu quo* in El Chamizal shall be defined in the sense that no action of a judicial or administrative character shall be taken within the said territory until the terms of the new Treaty shall have been fully determined.

The condition of the *statu quo* in El Chamizal being thus settled, I am awaiting the notice Your Excellency may be pleased to give me to proceed with the discussion of the Treaty draft.

I avail myself of this opportunity to renew to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

His Excellency,
P. C. KNOX,
Secretary of State.

Mr. Knox to Señor de la Barra.

No. 196. DEPARTMENT OF STATE,
WASHINGTON, *March 7, 1910.*

Excellency:

I have the honor to acknowledge the receipt of your note numbered 521 of March 1st, 1910, wherein you state that, as agreed at the interview recently held at this Department, you have informed your Government of the readiness of the Department of State to agree that the conditions of the *status quo* in El Chamizal shall be defined in the sense that no action of a judicial or administrative character shall be taken within the said territory until the terms of the new treaty shall have been fully determined, and that, the conditions of the *status quo* in El Chamizal being thus settled, you are awaiting notice to proceed with the discussion of the treaty draft.

You will recall that I was happy to inform you at the interview to which you refer that the proposition of settlement made by the Government of Mexico appeared to me personally to afford a basis of negotiations upon which it would be possible for the two Governments to make a friendly, amicable and satisfactory adjustment of this long standing and somewhat troublesome question, but that I would be unable to make any definite statement upon this point until I had laid the matter before the President and secured his authorization to begin negotiations.

You will also recall that you made the suggestion which you now renew in your note that during these negotiations, the *status quo* in El Chamizal should be defined in the sense that no action of a judicial or administrative character should be taken within the said territory until the terms of the new treaty should have been fully determined, and as I recall it, you also added a statement not included in your note that this, of course, would not apply to the policing of the El Chamizal tract by the authorities of El Paso which should be continued by the authorities of El Paso. At that time I was glad to indicate to you that should the President authorize the opening of the negotiations as to which I was to consult him as above set forth, I should then be in a position to take up and discuss this question generally, but that I now saw no objection to the proposition of making some arrangement regarding the preservation of the *status quo* in that tract so far as the rights of private parties were concerned pending the conclusion of the negotiations which we might begin.

I beg to assure you of my belief that we shall have no difficulty in arranging for a proper continuance of the *status quo* in the disputed tract so far as it affects the interests of private parties when once I am authorized to begin the negotiations referred to.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency Senor Don
FRANCISCO LEON DE LA BARRA
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *Marzo 11 de 1910.*

N°. 529.

Excelentísimo Señor:

Tengo la honra de acusar recibo á Vuestra Excelencia de su nota número 196, fecha 8 del mes en curso, relativa al territorio llamado "El Chamizal."

Al comunicar á mi Gobierno el resultado de nuestra entrevista á ese respecto, cuidé de hacerle saber que la opinión expresada por Vuestra Excelencia no podía considerarse definitiva, sino sujeta á las condiciones que Vuestra Excelencia fija en la nota que contesto.

Respecto del mantenimiento del statu quo en El Chamizal creo que mi Gobierno no tendría inconveniente en aceptar un acuerdo en que se establezca que, durante el tiempo de las negociaciones del nuevo tratado, ninguna acción judicial ó administrativa pueda realizarse en el territorio en cuestión. Se exceptúan de este principio las que tengan un carácter meramente de policía, limitado al mantenimiento del orden, y sin que esto implique reconocimiento ó menoscabo de la soberanía de uno ú otro país.

Si Vuestra Excelencia está conforme con estas ideas, que ya trasmito á mi Gobierno, se evitará una de las causas de reclamaciones de particulares durante las negociaciones del tratado.

Estimando en su alto valor las amistosas declaraciones de Vuestra Excelencia, me complazco en reiterarle las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA,

WASHINGTON, *March 11, 1910.*

N°. 529.

Most Excellent Sir:

I have the honor to acknowledge the receipt of Your Excellency's note No. 196 of the 8th instant relative to the so-called "El Chamizal" territory.

In reporting to my Government the outcome of our interview on this subject, I took care to advise it that the opinion expressed by Your Excellency was not to be considered as final but was subject to the conditions set forth by Your Excellency in the note under reply.

As regards the maintenance of the status quo in El Chamizal, I believe that my Government would have no objection to accepting an agreement providing that no action of a judicial or administrative character shall be taken within the said territory during the course of the negotiations for the new treaty. This principle does not include action of a purely policial character limited to the preservation of order, neither the recognition of nor derogation from the sovereignty of either country being implied therein.

If Your Excellency should concur in these views which I am now transmitting to my Government one of the causes of private claims during the treaty negotiations would be removed.

Appreciating the high value of Your Excellency's friendly declarations, I take pleasure in renewing to you the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

His Excellency
PHILANDER C. KNOX,
Secretary of State.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON. *Marzo 19 de 1910.*

N°. 22.

Excelentísimo Señor:

Tengo la honra de enviar á Vuestra Excelencia, como anexo á esta nota, un memorandum de la entrevista que tuve la honra de celebrar ayer con el Honorable Sr. Huntington Wilson, Subsecretario de Estado, acerca del proyecto de Tratado de Límites Fluviales propuesto por México y del *statu quo* en El Chamizal.

Reitero á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

Memorandum.

El Embajador de México tuvo la honra de celebrar ayer una entrevista con el honorable señor Huntington Wilson, Subsecretario de Estado, quien le expresó la decisión de su Gobierno, de someter á arbitraje la cuestión pendiente de El Chamizal, y le preguntó si había recibido instrucciones acerca de la persona que pudiera desempeñar el cargo de árbitro.

El Embajador de México manifestó al honorable señor Wilson que no había creido necesario solicitar instrucciones de su Gobierno acerca de este punto especial porque las indicaciones que había recibido del Departamento le habían mostrado la buena disposicion que en éste había para celebrar el Tratado de Límites propuesto por México; pero que las pediría á su Gobierno, al comunicarle la decisión que en esos momentos se le hacía saber.

El honorable señor Huntington Wilson, se sirvió indicar la conveniencia de que el Gobierno de México presentara una lista de cinco ó seis personas, para elegir de entre ellas el árbitro que

podría ser por ejemplo, el Presidente de la Corte Suprema del Canadá.

El Embajador dijo que transmitiria esa indicación á su Gobierno y preguntó al honorable señor Subsecretario de Estado cuál era la decisión del Departamento acerca del Tratado de Límites en los demás puntos del proyecto presentado.

El honorable señor Huntington Wilson manifestó que no tenía instrucciones del señor Secretario de Estado á ese respecto, y por indicación suya, el señor William Dennis, "Assistant Solicitor" del Departamento manifestó, que en opinión del Comisionado de Límites americano, y de él mismo, el nuevo proyecto de Tratado no ofrecía ventajas respecto al que está vigente.

El Embajador de México, refiriéndose á las esplicaciones dadas por la Embajada en las notas que ha dirigido al Departamento de Estado respecto á esa materia, expuso las ventajas que presentaría una frontera natural y las que se deducirían de las reglas claras y precisas que enuncia el proyecto de Tratado de Límites, cuya aplicación evitaría nuevas cuestiones en lo futuro. El señor Huntington Wilson se sirvió ofrecer que por escrito se comunicaría á la Embajada la opinion del Departamento respecto al Tratado de Límites fluviales.

En seguida, el Embajador de México, indicó la conveniencia de establecer con precisión los términos del *statu quo* en El Chamizal.

El honorable señor Huntington Wilson reconció la necesidad de determinar las condiciones del *statu quo* y sugirió que se concediera facultad á la autoridad de policía de El Paso, Texas, para impedir que ocuparan terrenos en esa región los individuos que carecieran de títulos.

El Embajador expresó su tenor de que ese acuerdo concediera á las autoridades de policía de El Paso, facultades de carácter judicial, que podrían ser de aplicación delicada en algunos casos y suplicó al señor Subsecretario de Estado que se sirviera darle forma á esa indicación, al contestar la nota en que la Embajada propuso los términos del *statu quo*, ofreciendo, al mismo tiempo, que la comunicaría inmediatamente á su Gobierno para llegar á un acuerdo que consideraba urgente.

WASHINGTON, *19 de Marzo de 1910.*

[Translation.]

No. 22.

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA,

WASHINGTON, *March 19, 1910.*

Most Excellent Sir:

I have the honor to forward herewith to Your Excellency a memorandum of the interview I had the honor to have yesterday with the Hon. Huntington Wilson, Assistant Secretary of State, in regard to the draft of the Water Boundary Treaty proposed by Mexico and the *status quo* in El Chamizal.

I renew to Your Excellency the assurances of my highest and most distinguished consideration.

(Signed) F. L. DE LA BARRA.

His Excellency PHILANDER C. KNOX,
Secretary of State.

[Translation.]

Memorandum.

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA,

WASHINGTON, *March 19, 1910.*

The Ambassador of Mexico had the honor to have an interview yesterday with the Honorable Huntington Wilson, Assistant Secretary of State, who announced his Government's decision to refer the pending Chamizal question to arbitration and inquired whether the Ambassador had received instructions as to the person who could assume the office of arbitrator.

The Ambassador of Mexico told the Honorable Mr. Wilson that he had not deemed it necessary to ask his Government for instructions on this particular point inasmuch as he had found in the statements he had received from the Department evidence of its being favorably disposed to conclude the Boundary Treaty proposed by Mexico, but that he would, in reporting to his Government the decision that had just been made known to him, ask for such instructions.

The Honorable Mr. Huntington Wilson was pleased to suggest that it would be expedient for the Government of Mexico to submit a list of five or six persons among whom the arbitrator who

might, for instance, be the Chief Justice of Canada, would be selected.

The Ambassador said he would report this suggestion to his Government and inquired of the Honorable Assistant Secretary of State what decision had been reached by the Department, touching the Boundary Treaty, as to the other points presented in the draft.

The Honorable Mr. Huntington Wilson replied that he was without instructions from the Secretary of State in that respect and, on his suggestion, Mr. William Dennis "Assistant Solicitor" of the Department said that in the opinion of the American Boundary Commissioner and his own, the new Treaty draft offered no advantage over the existing treaty.

The Ambassador of Mexico, referring to the explanations offered by the Embassy in the notes addressed to the Department of State on the subject, recited the advantages that would go with a natural boundary and should be derived from the clear and precise rules set forth in the Boundary Treaty draft, the enforcement of which would remove further questions in the future. Mr. Huntington Wilson was pleased to propose to communicate to the Embassy in writing the Department's views concerning the Water Boundary Treaty.

The Ambassador of Mexico then pointed out the desirability of defining the terms of the *status quo* in El Chamizal.

The Honorable Mr. Huntington Wilson acknowledged that it was necessary to determine the conditions of the *status quo* and suggested that power should be granted to the police authorities of El Paso, Texas, to prevent the occupancy of lands in that tract by persons without a title.

The Ambassador expressed a fear that such an agreement would vest the police authorities of El Paso with powers of a judicial character the exercise of which might in some cases be delicate and begged the Assistant Secretary kindly to put his suggestion into shape in the answer to the Embassy's note submitting the terms of the *status quo*, and offered at the same time to make it known at once to his Government in order to arrive at an agreement which he considered urgent.

WASHINGTON, *March 19, 1910.*

Mr. Knox to Señor de la Barra.

No. 208. DEPARTMENT OF STATE,
WASHINGTON, *March 22, 1910.*

Excellency:

I am happy to realize from your recent conversation at the Department that the Government of Mexico, equally with that of the United States, is, at the present moment, more than ever before anxious to bring to a definitive and prompt settlement the question of the sovereignty of the Chamizal tract, which has been the subject of negotiations between the two Governments ever since the failure of the Joint Commission in 1897 to settle the boundary at this point, negotiations which have been particularly active during the last three years.

On July 19th, 1907, Your Excellency's distinguished predecessor proposed arbitration, and in line with his suggestion there was considered and discussed the reference of the question to arbitration by a Canadian jurist. The Government of the United Mexican States very naturally concluded from the delay of the Federal Government's categorical response that the proposal in question had failed to commend itself. Therefore, as further evincing the desire for early settlement, Your Excellency recently so ably carried out your instructions to seek settlement of the question by an exchange of territory to be effected on the ground of interpretation of the line, thus making more specific the general suggestions made by your predecessor on May 21st, 1908, and December 12, 1908.

In the earlier of these communications and evidently with a view to facilitating this method of settlement, Your Excellency's predecessor proposed a new boundary treaty which should have also the effect of working some modifications,—not, however, deemed by this Department, after the most careful consideration, to be material,—in the rules which guide the Joint Commission in tracing the boundary under the present Convention.

So long ago as March 21, 1907, your predecessor called the Department's attention to the action of the United States Marshal in proceeding to the execution of certain writs of sequestration which had been issued by the United States District Court against certain persons in possession of land within the disputed tract which they claimed under Mexican title, and at the request of Your Excellency's Government this Government intervened in these proceedings, calling the attention of the Federal courts to the

treaty provisions, whereby jurisdiction as regards the international title to the Chamizal tract had been conferred upon the International Boundary Commission, and suggested to the Federal Court through the Department of Justice that, as a matter of international comity, no proceedings between individuals as regards private title, which might seem, even indirectly, to involve the question of national sovereignty, should be allowed to proceed to the point of actually putting into execution writs of sequestration or of ejectment against the persons alleging Mexican title. Since that time Your Excellency's Government has, on various occasions, called the attention of this Department to proceedings in the American courts deemed by Your Excellency's Government to threaten the disturbance of the possession of persons claiming under Mexican title in the disputed tract, and this Department has, from time to time, in response to these requests, investigated the various matters complained of and taken such action as seemed appropriate in the premises.

It is not necessary to point out that in thus acting, as a matter of comity, in accord with the theory that the international sovereignty was in dispute this Government has never admitted any derogation of its *de facto* jurisdiction over the Chamizal tract, any more than it has ever expected Mexico to do so, in the case of that portion of Cordova the status of which is theoretically similar. I would further invite Your Excellency's especial attention to the fact, that although, in practice, certain other persons have inadvertently profited by the stay of action by American courts, yet this Government has, in no instance, consented or intended to do more than stay judicial proceedings and the results thereof in the cases of persons actually claiming under Mexican titles.

Unfortunately this liberal policy has had a result which the Mexican Government would surely be the first to deplore; that is, many individuals without even *prima facie* evidence of title or right are taking actual physical possession of lands in the Chamizal tract relying upon the benevolence of this Government to shield themselves from the just consequences of their wrongful acts,—a result evidently never contemplated by your Government.

The extreme irritation of the people of El Paso at this situation will at once be apparent to Your Excellency, and you will share my anxiety when I assure you that this situation is so fraught with danger of actual violence that I feel it must be at once remedied in order to prevent some untoward incident which would disturb the good feeling which now so happily prevails between the people

of El Paso and Juarez; and I add that the tension I find to exist on the ground is a great factor in compelling me now to ask the early and earnest consideration of Your Excellency's Government to the proposition which I shall now make, both to safeguard the immediate future and to assure a settlement of the question within the next half year,—a result in the attainment of which I may rely upon Your Excellency's energetic and able co-operation:

First. The Government of the United States as a practical compromise proposes to continue until the settlement of the question of the sovereignty of the Chamizal, the stay of proceedings in cases of persons able to show that they are claiming under *prima facie* Mexican title and that they or their predecessors in interest were in actual occupation of the lands so claimed on March 15, 1910, but not to interfere with the proper execution of judicial process against persons upon the Chamizal tract who have no *prima facie* Mexican title, or who have come upon the land in person or through those in privity with them since the 15th of March, 1910. The Department proposes to appoint an officer who shall be authorized to pass upon the question of the existence of *prima facie* Mexican title and of the fact of actual possession under such title prior to March 15, 1910, and to report to the Department the cases wherein ejectment should be prevented by virtue of international comity whereupon the necessary action will be taken by the appropriate officers of the Department of Justice as has been done in the past. It is not doubted that the Mexican Government will at once perceive that this arrangement is fully responsive to the true intent of its original request, that it is necessary to enable the United States to continue to exercise the *de facto* jurisdiction which it has hitherto exercised over the tract in question since its formation; and that it is entirely consistent with the contention of the Mexican Government as to the theoretical status of the land pending the final settlement of the question of sovereignty. In conclusion this Government cannot too strongly urge the acceptance of these temporary arrangements as a practical temporary solution of a situation which has become impossible.

Second. The Government of the United States greatly regrets that, while impressed with the convenience of a settlement of the boundary by exchange of territory upon the theory of interpretation of the boundary line, it finds it quite impracticable to agree upon the basis of exchange involving relinquishment by the United States of San Elizario as well as Horcon and the portion of

American territory now on the Mexican side of the present channe near El Paso.

Third. As indicated above the Government of the United States is still unable to persuade itself that a new treaty in the sense suggested by the communications of the Mexican Embassy would be of a mutual benefit sufficient to justify its negotiation.

Fourth. Adverting to the general suggestion of arbitration the Government of the United States proposes that the Governments of the United States and Mexico proceed forthwith to submit, each to the other, a list of three Canadian jurists, any one of whom would be a satisfactory umpire; that thereupon the two Governments seek to agree informally upon one name from these lists, and that, in the event of failure to do so the Government of the Dominion of Canada be asked to make a selection from the six jurists named. It is proposed that thereupon the two Governments resubmit the question of the sovereignty of the Chamizal tract to determination by the present Joint Commission acting with the Canadian jurist so selected as the third member with a casting vote. It is further proposed that a Convention in this sense be so framed that the decision of the Joint Commission enlarged as above, shall be arrived at within four months.

Doing myself the honor to lay these proposals before Your Excellency I cannot too earnestly request for them the earliest and most considerate attention, and I take advantage of this opportunity to renew to Your Excellency the assurances of my highest consideration.

P. C. KNOX.

His Excellency

Señor Don FRANCISCO LEON DE LA BARRA,

Mexican Ambassador.

Mr. Knox to Señor de la Barra.

DEPARTMENT OF STATE,

No. 209.[a] WASHINGTON, *March 22, 1910.*

Excellency:

I have the honor to acknowledge the receipt of your two notes of the 11th instant, numbered 529 and 530, respectively, and of your note No. 22, of the 19th instant, with enclosure, relative to the *status quo* in El Chamizal.

In reply thereto I have the honor to refer Your Excellency to my note, numbered 208, of this date.

[a][For more convenient reference this note is also printed infra, p. 514.—Agent's note.]

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency
Señor Don FRANCISCO LEON DE LA BARRA,
Mexican Ambassador.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *24 de marzo de 1910.*

N°. 42.

Excelentísimo Señor:

Con el más cuidadoso interés me impuse del contenido de la nota número 208, fechado el 22 del actual, en que Vuestra Excelencia se sirve proponer á mi Gobierno, por conducto de esta Embajada, las bases de un acuerdo para el mantenimiento del status quo en El Chamizal, así como las que pudieran ser establecidas para la solución por medio de un arbitraje, de la cuestión relativa á la soberania de ese territorio. Vuestra Excelencia se sirve manifestarme que el Departamento de Estado considera que un nuevo Tratado de Límites al que sirviere de base la proposición mexicana no tendría efectos beneficos suficientes para justificar su negociación.

Desde luego, me apresuro á afirmarle á Vuestra Excelencia que mi Gobierno, deseoso de llegar á un acuerdo pronto y justificado en esta cuestión, como lo ha demostrado por sus gestiones incesantes, tomará en consideración inmediata las proposiciones de Vuestra Excelencia, que le comunico hoy mismo, y que en la resolución que dé estará inspirado por sentimientos de justicia y de amistad hacia el Gobierno Americano.

En espera de las instrucciones que solicito, debo limitarme á acusar recibo de su nota á Vuestra Excelencia, y á hacer votos por que se llegue á un acuerdo definitivo que concilie los intereses de la justicia y sirva para robustecer los sentimientos de cordial amistad entre nuestros respectivos Gobiernos.

Con este motivo, me complazco en reiterar á Vuestra Excelencia las seguridades de mi más alta y más distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA.

WASHINGTON, *March 24, 1910.*

No. 42.

Most Excellent Sir:

I have read with thoughtful interest the contents of your note No. 208 of the 22nd instant by which Your Excellency is pleased to propose to my Government through this Embassy the bases of an agreement for the maintenance of the *status quo* in El Chamizal as well as those that might be set for the solution by means of arbitration of the question relative to the sovereignty of that territory. Your Excellency is pleased to say that the Department of State does not think that a new Treaty based upon the Mexican proposition would be of a mutual benefit sufficient to justify its negotiation.

I hasten to assure Your Excellency, here and now, that my Government desirous of arriving at an early and just agreement on this question, as shown by its constant efforts, will give immediate consideration to Your Excellency's propositions which I am forwarding this very day and that the resolutions that it will take will be prompted by sentiments of justice and friendship toward the American Government.

Pending the receipt of the instructions I have asked for, I must confine myself to acknowledging the receipt of Your Excellency's note and to making wishes for the conclusion of a final agreement which will subserve the ends of justice and tend to strengthen the sentiments of cordial friendship between our respective Governments.

On this occasion, I take pleasure in renewing to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

Most Excellent Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

No. 102. WASHINGTON, *Abril 5 de 1910.*

Excelentísimo Señor:

En virtud de instrucciones especiales de mi Gobierno, tengo la honra de acudir á Vuestra Excelencia á fin de que, si por parte del Gobierno americano no hubiere inconveniente, se den las instrucciones que corresponden al Comisionado de Límites de los Estados Unidos para que, de acuerdo con el Mexicano, proceda al fallo y á la consiguiente eliminación de veintrés nuevos bancos encontrados en las investigaciones que acaban de hacerse en los trés últimos meses en el curso inferior del río, entre Río Grande City y el Golfo de México y que no están incluidos entre los cincuenta y nueva ya eliminados y monumentados conforme á la Convención de 1905.

Renuevo á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los
Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA,

No. 102. WASHINGTON, *April 5, 1910.*

Most Excellent Sir:

Under special instructions from my Government I have the honor to have recourse to Your Excellency to the end that the American Government will, if it sees no objection thereto, issue appropriate instructions to the Boundary Commissioner of the United States directing him to proceed, jointly with his Mexican colleague, with the adjudication and elimination of twenty three other "bancos" found in the course of the investigations made during the last three months in the lower part of the river between Rio Grande City and the Gulf of Mexico, which are not included

in the fifty nine that have already been eliminated and monumented in accordance with the Convention of 1905.

I renew to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

Mr. Adee to Señor de la Barra.

DEPARTMENT OF STATE,
WASHINGTON, *April 16, 1910.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 102, of the 5th instant, and to inform you in reply that the Department has, in accordance with the request of the Mexican Government, issued instructions to the American member of the International Boundary Commission, United States and Mexico, to proceed, jointly with his Mexican colleague, with the adjudication and elimination of the twenty-three other bancos found in the course of the investigations made during the last three months on the lower part of the river between the Rio Grande City and the Gulf of Mexico, which are not included in the fifty-nine that have already been eliminated and monumented in accordance with the Convention of 1905.

In this connection the Department would observe that the American Commissioner has recommended that the two Governments instruct their respective Commissioners to proceed to the decision of the other cases now pending before the commission, particularly the three important bancos cases near El Paso, to the end that these bancos may be monumented and finally eliminated. This Department is prepared to give the instructions requested, if no objection is perceived on the part of your Government, and the matter is therefore brought to Your Excellency's attention with the request that, if agreeable to your Government, the Mexican Commissioner be instructed to proceed jointly with his American colleague to the decision of all pending cases.

Accept, Excellency, the renewed assurances of my highest consideration.

ALVEY A. ADEE,
Acting Secretary.

His Excellency, Señor DON FRANCISCO LEON DE LA BARRA,
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

WASHINGTON, *16 de abril de 1910.*

Número 153

Excelentísimo Señor:

Refiriéndome á la nota de Vuestra Excelencia, número 208, fecha el 22 de marzo último, relativa á la cuestión de la soberanía en El Chamizal y en cumplimiento de instrucciones especiales de mi Gobierno, tengo la honra de informar á Vuestra Excelencia que la Secretaría de Relaciones Exteriores de mi país hará, de toda preferencia, el estudio de las proposiciones contenidas en la nota de Vuestra Excelencia á que me refiero y que, tan pronto como sea posible, se dará á Vuestra Excelencia conocimiento del resultado, que tendrá por fin poner término al asunto de El Chamizal.

Reitero á Vuestra Excelencia las seguridades de mi más alta consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estados de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,

WASHINGTON, *April 16, 1910.*

No. 153.

Most Excellent Sir:

Referring to Your Excellency's note No. 208 of March 22 last, relative to the question of sovereignty in El Chamizal and complying with my Government's special instructions I have the honor to advise Your Excellency that the Department of Foreign Relations of my country will give precedence to the consideration of the proposals set forth in Your Excellency's note above referred to and that the result which will aim to bringing the Chamizal question to an end will be communicated to Your Excellency as soon as possible.

I renew to Your Excellency the assurances of my highest consideration.

F. L. DE LA BARRA.

Honorable PHILANDER C. KNOX,
Secretary of State.

NOTE VERBALE.

In view of the vital importance to the citizens of both countries of a speedy settlement of the difference between the two Governments regarding the sovereignty and title of the Chamizal tract; of the constant danger of some untoward circumstance growing out of the present situation which might disturb the harmonious relations of the people of Juarez and El Paso; and of the assurances which the Department of State has made to the citizens of El Paso that it would use every effort to expedite a settlement of this matter, the Department ventures to request that the subject be recalled by the Mexican Embassy to the attention of the Mexican Foreign Office, by telegraph.

In this connection reference is respectfully made to the Department's note No. 208, of March 22, 1910, and to the Mexican Embassy's note No. 153, of the 16th ultimo, in reply.

DEPARTMENT OF STATE,
Washington, May 14, 1910.

EMBAJADA DE MEXICO
EN LOS
ESTADOS DE UNIDOS DE AMERICA.

Memorandum:

WASHINGTON, *May 18th, 1910.*

The Mexican Ambassador has the honour to inform His Excellency, the Secretary of State, that he is in receipt of a telegram from the Ministry for Foreign Affairs stating that the Mexican Government will very soon give a reply to the proposition of the Department of State with regard to the form in which the El Chamizal question should be submitted to arbitration, and that the said question is at present being considered in preference to all others.

The Ministry for Foreign Affairs accepts the proposition of the Department of State with reference to the maintenance of the statu quo, with the exception of some points which it wishes to make clear without altering them substantially.

Having regard to the understanding in general of both Governments, respecting the maintenance of the statu quo at El Chamizal, this Embassy begs to propose that the Attorney General will ratify at once to the United States Attorney in Texas the instructions[a] given in his telegram of April the 2d and which were modified in a later telegram of April 13th.

The first instructions are in strict accordance with the agreement regarding the maintenance of the statu quo, but the second ones, could give room for interpretations which are contrary to the spirit that animates both Governments in these negotiations.

WASHINGTON, *May the 19th, 1910.*[b]

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

El Embajador de México tiene la honra de enviar al Excelentísimo Señor Knox, Secretario de Estado, la nota adjunta á que se refirió en la entrevista de hoy y se permite recordarle el ofrecimiento que Su Excelencia se sirvió hacerle de enviarle el texto del proyecto de la Convención que ha de servir de base á las negociaciones relativas á El Chamizal.

WASHINGTON, *Junio 9 de 1910.*

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *Junio 9 de 1910.*

Número 366.

Excelentísimo Señor:

De acuerdo con las instrucciones que hoy he recibido, tengo la honra de comunicar á Vuestra Excelencia que mi Gobierno acepta en general las proposiciones que contiene la nota de ese Departamento número 208, de 22 de Marzo último, relativas al mantenimiento del *statu quo* en El Chamizal y á la solución, por medio del arbitraje, de la cuestión de soberanía sobre dicho territorio.

[a] [These instructions had reference to intervention by the United States District Attorney in certain injunction proceedings brought against the Cotton Estate and the City of El Paso. It is not deemed necessary to print the voluminous documents relating to the proceedings.—Agent's note.]

[b] [This memorandum is dated both the 18th and 19th in original.—Agent's note.]

Mi Gobierno, que desde 1907 propuso al de los Estados Unidos recurrir al arbitraje, según aparece en la nota de esta Embajada de 19 de Julio de dicho año, ve con agrado que se acuda á este medio jurídico para resolver tan delicada cuestión.

La Secretaría de Relaciones de mi país queda enterada de que el Gobierno americana, aun cuando califica de conveniente la permuta de terrenos que México propuso en virtud de la interpretación de los tratados vigentes, no se resuelve á aceptar dicha permuta, ni tampoco considera necesaria la celebración de un nuevo tratado de límites.

El Gobierno de México considera insubsistentes las proposiciones hechas por ambos países, anteriores á la nota de Vuestra Excelencia de 22 de Marzo último, y declara, por conducto de esta Embajada, que acepta el arbitramento en la forma que aparece en dicha nota, asi como los términos propuestos para el mantenimiento del *statu quo* en El Chamizal; siempre que las decisiones del Comisionado que designe el Departamento de Estado tengan sólo un carácter provisional y no lesionen los derechos que sobre los terrenos puedan tener los interesados.

Mi Gobierno desea, además, que dicho Comisionado comunique oportunamente copia de sus decisiones al Delegado de México en la Comisión Internacional de Límites.

Celebrando cordialmente el nuevo avance hecho para la solución amistosa y conforme á los principios de justicia de este enojoso asunto, me complazco en reiterar á Vuestra Excelencia las seguridades de mi más alta y más distinguida consideración.

F. L. DE LA BARRA

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado
de los Estados Unidos de América,
Wáshington.

[Translation.]

EMBASSY OF MEXICO TO THE UNITED STATES OF AMERICA.

The Ambassador of Mexico has the honor to forward to the Most Excellent Mr. Knox, Secretary of State, the appended note to which he referred at today's interview and begs leave to remind him that His Excellency was pleased to offer to send him the text of the draft of Convention which is to serve as a basis for the negotiations relative to El Chamizal.

WASHINGTON, *June 9, 1910.*

[Translation.]

EMBASSY OF MEXICO TO THE UNITED STATES OF AMERICA.

WASHINGTON, *June 9, 1910.*

No. 366

Most Excellent Sir:

In accordance with the instructions I received today I have the honor to inform Your Excellency that my Government accepts in general the propositions contained in your Department's note No. 208 of March 22 last relative to the maintenance of the *status quo* in El Chamizal and to the solution by means of arbitration of the question of sovereignty over the said tract.

My Government which as early as 1907 proposed to that of the United States recourse to arbitration, as may be seen from this Embassy's note of July 19 of that year is gratified at having this legal mode resorted to for the solution of so delicate a question.

The Department of Foreign Relations of my country takes notice that the American Government, while calling the exchange of territory proposed by Mexico under the interpretation of existing treaties convenient, does not bring itself to accepting the exchange or deeming it necessary to conclude a new boundary treaty.

The Government of Mexico regards as non-subsisting the propositions made by both countries prior to Your Excellency's note of March 22 last and declares, through this Embassy, that it accepts arbitration in the form described in the said note, as well as the terms suggested for the maintenance of the *status quo* in El Chamizal; provided that the decisions of the Commissioner to be designated by the Department of State shall have but a provisional character and shall not impair the rights that the interested parties may have on the land.

My Government further desires that the said Commissioner will seasonably communicate a copy of his decisions to the Mexican delegate on the International Boundary Commission.

Cordially rejoicing in this further step toward the friendly solution of this troublesome question in accordance with the principles of justice, I take pleasure in renewing to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA

Hon. PHILANDER C. KNOX,

Secretary of State.

Mr. Knox to Señor de la Barra.

No. 260. DEPARTMENT OF STATE,
WASHINGTON, *June 17, 1910.*

Excellency:

I have the honor to acknowledge the receipt of the memoranda of your Embassy, dated May 18 and June 9 last, and of your note No. 366 of June 9, enclosed with your Embassy's memorandum of the same date.

This Government learns with great satisfaction that your Excellency's Government accepts arbitration in the form proposed in this Department's note No. 208 of March 22 last, as well as the terms suggested for the maintenance of the status quo in the Chamizal tract pending the arbitration. Your Excellency adds the proviso that "the decisions of the commissioner to be designated by the Department of State shall have but a provisional character and shall not impair the rights that the interested parties may have on the land." By this the Department understands your Excellency to mean that the decision of the commissioners designated by this Department shall have force and effect only pending the arbitration and shall have no effect whatever as regards the ultimate title to the lands in question after the decision of the international commission. This was the meaning intended to be conveyed by the Department's note of March 22, and this Government therefore accepts in this sense the proviso suggested by your Excellency. This Government will take pleasure in instructing the commissioner, who will be designated at once, seasonably to communicate a copy of his decisions to the Mexican delegate on the International Boundary Commission.

Referring to our conversation and to my promise to hand you a draft for a convention which may serve as a basis for the proposed convention for the submission to arbitration of the Chamizal case, I beg leave to enclose herewith such a draft which I have endeavored to draw in such a manner as to depart as little as possible from the provisions of the Convention of 1889 providing for the International Boundary Commission. It is hoped that the provisions of this draft will be readily understood and will be acceptable to Your Excellency's Government, and the Department will be happy to discuss them with the Embassy at any time. In view of the early adjournment of the Senate of the United States, to which it will be necessary, in accordance with the constitutional requirement, for the Executive to submit

this Convention for its advice and consent, I beg to suggest that Your Excellency call upon me at your convenience in order that we may communicate to each other the respective lists of three Canadian jurists as provided in Department's note of March 22, 1910, which provision the Department understands to have been assented to by your Government. The Department believes that it will be found that we shall have no difficulty in agreeing upon an umpire in the course of an informal conversation.

The Department most cordially reciprocates your felicitations upon this further evidence of the neighborly good understanding between our two Governments which has once more enabled us to solve our differences in a manner which is not only satisfactory as regards the immediate matter in controversy, but also adds another landmark in the history of arbitration in which the two Republics have borne so distinguished a part.

Accept, Excellency, the renewed assurance of my highest consideration.

P. C. KNOX.

His Excellency Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

CONVENTION FOR THE ARBITRATION OF THE CHAMIZAL CASE.

The United States of America and the United States of Mexico, desiring to terminate, in accordance with the various conventions now existing between the two countries and in accordance with the principles of international law, the difference which has arisen between the two governments as to the international title to the Chamizal tract, upon which the International Boundary Commission has failed to agree, have resolved to refer this difference to the International Boundary Commission established by the convention of 1889, said Commission to be enlarged for the purpose of this case only as hereinafter provided, and have appointed as their respective plenipotentiaries:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States of America; and

The President of the United States of Mexico, Don Francisco León de la Barra, Ambassador Extraordinary and Plenipotentiary of the United States of Mexico, at Washington.

Who, after having exhibited their respective full powers, and having found the same to be in good and due form, have agreed upon the following articles:

ARTICLE 1.

The Chamizal tract in dispute is located at El Paso, Texas, and Juarez, Chihuahua, and is bounded westerly and southerly by the middle of the present channel of the river, easterly by the middle of the abandoned channel of 1897, and northerly by the middle of the channel of the Rio Grande as surveyed by Emery and Salazar in 1852, and is substantially as shown on a map on a scale of 1–5000, signed by General Anson Mills, Commissioner on the part of the United States, and Señor Don F. Javier Osorno, Commissioner on the part of Mexico, which accompanies the report of the International Boundary Commission, in Case No. 13, entitled "Alleged Obstruction in the Mexican End of the El Paso Street Railway Bridge and Backwaters Caused by the Great Bend in the River Below," and on file in the archives of the two governments.

ARTICLE 2.

The difference as to the international title of the Chamizal tract shall be again referred to the International Boundary Commission which shall be enlarged by the addition, for the purposes of the consideration and decision of the aforesaid difference only, of a third Commissioner who shall preside as umpire over the deliberations of the Commission. The umpire shall be a Canadian jurist and shall be selected by the two governments by common accord, or, failing such agreement, the government of Canada shall be requested to name him.

ARTICLE 3.

The Commission shall decide as to whether the international title to the Chamizal tract is in the United States or Mexico. The decision of the Commission whether rendered unanimously or by majority vote of the Commissioners and the umpire shall be final and conclusive upon both governments. The decision shall be in writing and shall state the reasons upon which it is based. It shall be rendered within thirty days after the close of the hearings.

ARTICLE 4.

On or before December 1, 1910, each government shall present to the Agent of the other party two printed copies (with such additional copies as may be agreed on) of its case, together with the documentary evidence upon which it relies. It shall be sufficient

for this purpose if such case is delivered at the Mexican Embassy at Washington or at the American Embassy at the City of Mexico, as the case may be, for transmission to the Agent of its government. As soon thereafter as may be, and within ten days, each party shall deliver two printed copies of its case and accompanying documentary evidence to each member of the International Boundary Commission, including the Umpire. Delivery to the two Commissioners may be made at their offices in El Paso, Texas; the copies intended for the umpire may be delivered at the British Embassy at Washington or at the British Legation at the City of Mexico.

On or before February 1, 1911, each government may present to the Agent of the other party a counter case with documentary evidence in answer to the case and documentary evidence of the other party. The counter case shall be delivered in the same manner as the case.

The Commission shall hold its first session in the City of El Paso, State of Texas, where the offices of the two Commissioners are situated, on March 1, 1911, and shall proceed to the trial of the case with all convenient speed, sitting either at El Paso or Ciudad Juarez as the convenience of the Commission may require. The Commission shall act in accordance with the procedure established in the Boundary Convention of 1889. It shall, however, be empowered to adopt, for the purposes of the trial of this case, such rules and regulations as it may see fit.

At the first meeting of the Commission each party shall deliver in duplicate, with such additional copies as may be agreed on, a printed argument showing the points relied upon in the case and counter case, and referring to the documentary evidence upon which it is based. Each party shall have the right to file such supplemental printed brief as it may deem advisable. Such briefs shall be filed within ten days after the close of the hearings, unless further time be granted by the Commission.

ARTICLE 5.

Each government shall be entitled to be represented before the Commission by an agent and such counsel as it may designate, who shall be entitled to make oral argument and to examine and cross-examine witnesses and also, subject to the discretion of the Commission, to introduce further documentary evidence for cause shown.

ARTICLE 6.

Each government shall pay the expenses of the presentation of its case to the Commission; all other expenses including the honorarium for the Umpire shall be borne by the two governments in equal moieties.

ARTICLE 7.

The present Convention shall be ratified in accordance with the Constitutional forms of the Contracting Parties and shall take effect from the date of the exchange of its ratifications.

The ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the above Articles, both in the English and Spanish languages, and have hereunto affixed their seals.

DONE in duplicate at the city of Washington this day of , one thousand nine hundred and ten.

Mr. Knox to Señor de la Barra.

No. 261. DEPARTMENT OF STATE,
WASHINGTON, *June 27, 1910.*

Excellency:

Referring to previous correspondence, particularly to the Department's note No. 208, of March 22, 1910, reviewing the circumstances in connection with the dispute between the United States and Mexico over the sovereignty of the Chamizal tract and proposing that the question be submitted to arbitration, I have the honor to inclose herewith a copy of a letter, dated to-day and addressed by the Department to Mr. Wilbur Keblinger, American Commissioner on the Commission for the Study of the Equitable Distribution of the Waters of the Rio Grande and Colorado Rivers, designating him as the officer to pass on the question of the existence of *prima facie* Mexican title and of the fact of actual possession under such title on March 15, 1910, in cases where legal proceedings looking towards ejectment are threatened or undertaken.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

Enclosure:
As stated above.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

[Inclosure.]

Mr. Knox to Mr. Keblinger.

DEPARTMENT OF STATE,
WASHINGTON, *June 27, 1910.*

Mr. WILBUR KEBLINGER,
American Commissioner on the Commission for the Study of the Equitable Distribution of the Waters of the Rio Grande and Colorado Rivers, The Balfour, Washington, D. C.

SIR: The Department encloses herewith a copy of its note No. 208, of March 22, 1910, to the Ambassador of Mexico at this capital, reviewing the circumstances in connection with the dispute between the United States and Mexico over the sovereignty of the Chamizal tract and proposing that the question be submitted to arbitration. Your attention is particularly called to that passage in the note in which the Department says: "The Department proposes to appoint an officer who shall be authorized to pass upon the question of the existence of *prima facie* Mexican title and of the fact of actual possession under such title on March 15, 1910, and to report to the Department the cases wherein ejectment should be prevented by virtue of international comity, whereupon the necessary action will be taken by the appropriate officers of the Department of Justice as has been done in the past."

The Department takes pleasure in designating you as the officer in question, and you are accordingly authorized, in case you are so requested either by the Mexican Commissioner of the International Boundary Commission or by any person or persons in the Chamizal tract against whom legal proceedings looking toward ejectment are threatened or undertaken, to pass upon the questions as to whether or not such persons are claiming under *prima facie* Mexican title, and whether or not "they or their predecessors in interest were in actual occupation of the lands so claimed on March 15, 1910." In case you find, first, that any claimant claims under *prima facie* Mexican title, and, second, that such person or his predecessors in interest were in actual possession of the land so claimed on March 15, 1910, you will report your findings in full to the Department, together with such an abstract of the evidence in the case as you may deem necessary to the end that the Department may request the appropriate action through the Department of Justice. In case immediate ejectment proceedings are threatened so that there is no time for reference of the matter to the Department, you will act upon your own responsibility, and if

you deem that the nature of the case so requires you will request the United States District Attorney or his local assistant to take such action as may be deemed appropriate. In cases of importance or doubt where there is no time for a written report to the Department you will consult the Department by telegraph when practicable.

The Department feels that your familiarity with the matters in controversy and with the local conditions at El Paso should enable you to exercise proper discretion in the handling of the various cases which may arise, and that you will always bear in mind the desirability of maintaining amicable relations between the citizens of the United States and Mexico pending the final arbitration of the Chamizal controversy under the proposed convention between the United States and Mexico.

I am, Sir, your obedient servant,

P. C. KNOX.

Enclosures:
As stated above.[a]

Señor Ricoy to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

Número 191. WASHINGTON, *12 de octubre de 1910.*

Excelentísimo Señor:

Refiriéndome á la correspondencia anterior y cumpliendo con instrucciones especiales que he recibido, tengo la honra de manifestar á Vuestra Excelencia que mi Gobierno quedó enterado, con satisfacción, de que conforme con sus deseos, ese Departamento, al muy digno cargo de Vuestra Excelencia, había tenido á bien enviar instrucciones al señor Comisionado americano de la Comisión Internacional de Límites para que procediera con su colega mexicano á la eliminación de los 23 bancos que se encontraron entre Río Grande City y el Golfo, los cuales no estaban incluídos en los 58 ya eliminados entonces por la Convención de 1905.

Mi Gobierno, me dice que, teniendo en cuenta que el caso del Chamizal está á punto de resolverse, siguiendo las bases estipuladas en la Convención de 24 de junio último, las mismas razones que se tuvieron en consideración en la nota No. 197 que esta Embajada tuvo la honra de dirigir á ese Departamento, con fecha

[a] [Enclosure omitted. For copy of note referred to, see supra, p. 421.—Agent's note.]

11 de mayo de 1908, para pedir al Gobierno de los Estados Unidos de América que los señores Comisionados de Límites se abstuvieran de pronunciar fallo alguno ó resolución en los pendientes casos de bancos, se tienen hoy para insistir puede aún en vigor dicha prevención, hasta que no se falle en definitiva el caso del Chamizal, lo que es de creer se llevará á cabo en un plazo relativamente corto.

Ruego á Vuestra Excelencia se sirva aceptar las seguridades de mi consideración más alta y más respetuosa.

L. RICOY,
Encargado de Negocios ad interim.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado
de los Estados Unidos de América,
Washington.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA.

No. 191. WASHINGTON, *October 12, 1910.*

Most Excellent Sir,

With reference to previous correspondence and in compliance with special instructions I have received, I have the honor to advise Your Excellency that my Government was gratified to hear that the Department under the very worthy charge of Your Excellency had, in accordance with my Government's desires, been pleased to instruct the American Commissioner of the International Boundary Commission to proceed, in conjunction with his Mexican Colleague, with the elimination of the 23 bancos found between Rio Grande City and the Gulf which were not included among the 58 already eliminated at the time by the Convention of 1905.

My Government tells me that, taking into consideration the early settlement of the Chamizal case on the basis stipulated in the Convention of June 24 last, the same reasons that were considered in note No. 197 which this Embassy had the honor to address to Your Department under date of May 11, 1908, for the request made of the Government of the United States that the Boundary Commissioners refrain from handing down any finding or decision touching the pending banco cases, still exist to adhere

to the said inhibition until the Chamizal case shall have been finally settled which there is reason to believe will be done in a comparatively short time.

I beg Your Excellency to be pleased to accept the assurances of my highest and most respectful consideration.

L. RICOY.
Chargé d'affaires ad interim.

Hon. PHILANDER C. KNOX,
Etc., Etc., Etc.

Mr. Adee to Señor de la Barra.

No. 334. DEPARTMENT OF STATE,
WASHINGTON, *November 3, 1910.*

Excellency:

I have the honor to acknowledge the receipt of Señor Ricoy's note, No. 191, of the 12th ultimo, in which he renews the request contained in the Embassy's note, No. 197, of May 11th, 1908, that, in view of the expected early settlement of the Chamizal case, the International Boundary Commission refrain from handing down any finding or decision touching the pending banco cases until the Chamizal case shall have been finally settled.

In reply, I have the honor to inform Your Excellency that the United States Commissioner has been furnished with a copy of Señor Ricoy's note, with intructions to comply with the request of your Government as expressed therein.

Accept, Excellency, the renewed assurances of my highest consideration.

ALVEY A. ADEE,
Acting Secretary of State.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Mr. Wilson to Señor de la Barra.

No. 363. DEPARTMENT OF STATE,
WASHINGTON, *December 13, 1910.*

Excellency:

I have the honor and the pleasure to inform you that the Senate, by its resolution of the 12th instant, has given its advice and consent to the ratification, without amendment, of the convention between the United States and Mexico for the arbitration of the

Chamizal case, signed on June 24, 1910, and the supplementary protocol signed on December 5th, 1910, changing the dates fixed by Article 5 of the Convention.

Upon learning from you that similar action has been taken by the Congress of Mexico, and that you are ready to proceed with the exchange of ratifications, the Secretary of State will be glad to fix a time convenient to you to effect the exchange.

Accept, Excellency, the renewed assurances of my highest consideration.

HUNTINGTON WILSON
Acting Secretary of State.

His Excellency
Senor Don FRANCISO LEON DE LA BARRA,
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

No. 479. WASHINGTON, *20 de Diciembre de 1910.*

Excelentísimo Señor:

Tengo la honra de acusar recibo á Vuestra Excelencia de su nota no. 363, fecha 13 del actual, en que se sirve decirme que el Senado ha dado su aprobación y consentido en que se ratifique sin enmienda la Convención entre México y los Estados Unidos para el arbitramento del caso de El Chamizal, así como el protocolo adicional.

Al manifestar á Vuestra Excelencia en respuesta que al recibir dicha nota comuniqué inmediatamente por telégrafo su contenido, á mi Gobierno, ruego á Vuestra Excelencia se sirva aceptar las reiteradas seguridades de mi más alta y más distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América.
Washington, D. C.

[Translation.]

MEXICAN EMBASSY
IN THE
UNITED STATES OF AMERICA.

No. 479. WASHINGTON, *December 20, 1910.*

Most Excellent Sir:

I have the honor to acknowledge the receipt of Your Excellency's note, No. 363, under date of the 13th instant, in which you state that the Senate has given its approval and consent to the ratification without amendment of the Convention between Mexico and the United States for the arbitration of the El Chamazal case, as well as of the additional protocol.

While stating to Your Excellency in reply that as soon as I received the aforementioned note I communicated its contents immediately by telegraph to my Government, I beg of Your Excellency to kindly accept the reiterated assurances of my highest consideration.

F. L. DE LA BARRA.

His Excellency, PHILANDER C. KNOX,
Secretary of State of the United States,
Washington, D. C.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

No. 495. WASHINGTON, 23 *de Diciembre de 1910.*

Excelentísimo Señor:

Refiriéndome á la nota no. 191, fecha 12 dè Octubre último, en que esta Embajada solicitó que los Señores Comisionados de Límites entre México y los Estados Unidos se abstuvieran de pronunciar ningún nuevo fallo sobre bancos, mientras no se resolviera la cuestión de El Chamizal, por instrucciones especiales que he recibido de la Secretaría de Relaciones Exteriores tengo la honra de manifestar á Vuestra Excelencia que mi Gobierno sólo desea suspender dicho fallo respecto de los bancos situados arriba de Río Grande City.

Por tanto, vengo á pedir á Vuestra Excelencia que se sirva tomar nota de esta aclaración y gestione lo conducente para que desde luego se sigan investigando y resolviendo los casos de bancos del [redacted]río, entre Río Grande City y el Golfo de México.

Ruego á Vuestra Excelencia se sirva aceptar las seguridades de mi más alta y más distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los
Estados Unidos de América, Washington.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA.

No. 495. WASHINGTON, *December 23, 1910.*

Most Excellent Sir:

Referring to the note of October 12, last, No. 191, by which this Embassy asked that the Boundary Commissioners of Mexico and the United States abstain from rendering any further award concerning bancos, pending the settlement of the Chamizal, I have the honor, under special instructions I have received from the Department of Foreign Relations, to inform Your Department that my Government desires such suspension of awards only as regards the bancos lying above Rio Grande City.

I therefore request Your Excellency kindly to take note of the foregoing declaration and to take appropriate action to let the investigation and settlement of the cases of bancos in the lower stream between Rio Grande City and the Gulf of Mexico proceed.

I beg Your Excellency to be pleased to accept the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA

The Most Excellent Mr. PHILANDER C. KNOX
Secretary of State of the United States
Washington.

Mr. Knox to Señor de la Barra.

DEPARTMENT OF STATE,
No. 379. WASHINGTON, *January 6, 1911.*

Excellency:

I have the honor to acknowledge the receipt of your note of the 23d ultimo requesting, in compliance with special instructions from your Government, that the suspension of awards concerning bancos pending the settlement of the Chamizal case, suggested in your note of October 12th, shall apply only to the bancos lying

above Rio Grande City, and that the investigation and settlement of the cases of bancos in the lower stream between Rio Grande City and the Gulf of Mexico proceed.

In reply it affords me pleasure to say that the Department has taken action in the sense requested by you.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency, Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

No. 687. WASHINGTON, *19 de enero de 1911.*

Excelentísimo señor:

Tengo la honra de comunicar á Vuestra Excelencia, que he recibido el Pleno Poder necesario para efectuar el canje de las ratificaciones de la Convención celebrada entre México y los Estados Unidos de América, para someter al arbitraje el caso de "El Chamizal", así como el documento respectivo, por lo que ruego á Vuestra Excelencia se sirva señalarme día y hora para la realización de dicho canje.

Reitero á Vuestra Excelencia las seguridades de mi consideración más alta y distinguida.

F. L. DE LA BARRA.

Excelencísimo señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
&c., &c., &c.,
Washington, D. C.

[Translation.]

MEXICAN EMBASSY
IN THE
UNITED STATES.

No. 687. WASHINGTON, *January 19, 1911.*

Most Excellent Sir:

I have the honor to inform Your Excellency that I have received the necessary Full Power in order to make the exchange of ratifications of the Convention concluded between Mexico and

the United States of America for the submission of the "El Chamizal" case to arbitration, as well as the document relating thereto, for which reason I request Your Excellency to kindly appoint a day and hour for the making of said exchange.

I reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

His Excellency Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Knox to Señor de la Barra.

DEPARTMENT OF STATE,
No. 394. WASHINGTON, *January 24, 1911.*

Excellency:

I have the honor to acknowledge the receipt of your note of the 19th instant, requesting that a time and hour be fixed for the exchange of ratifications of the Convention for the arbitration of the Chamizal case and the supplementary protocol amendatory thereof, and to inform you in reply that I shall be glad to effect the exchange with you at six o'clock this afternoon at my home, if that time meets your convenience.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

CORRESPONDENCE RELATING TO THE ORIGINAL FIFTY THREATENED EVICTIONS.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *Marzo 21 de 1907.*

Número 26.

Excelentísimo Señor:

De acuerdo con lo que tratamos en la entrevista que tuve la honra de celebrar esta mañana con Usted, sobre el asunto de "El Chamizal," le manifiesto que he recibido un telegrama del Señor Secretario de Relaciones Exteriores de mi país, que á la letra dice lo siguiente:

"Comisionado Mexicano de Límites en Ciudad Juarez díceme que se le han presentado varios vecinos de los terrenos comprendidos en 'El Chamizal,' pidiéndole urgentemente ayuda ó consejo sobre la actitud que deben tomar respecto á una órden de desalojamiento inmediato de sus propiedades que á mas de cincuenta familias ha prevenido el Marshal de El Paso, que es funcionario federal de los Estados Unidos. Ellos parecen dispuestos á oponerse á viva fuerza pues creen estar en sus propiedades y en jurisdicción mexicana, mientras no se resuelva la cuestión internacional pendiente. Sírvase dar conocimiento á Departmento de Estado á efecto de que se retiren órdenes dadas al Marshal, si es que existen, y se suspenda toda clase de procedimientos."

En virtud de las instrucciones que se sirve darme mi Gobierno en el preinserto telegrama, suplico á Usted que tenga á bien recabar de quien corresponda que se retiren las órdenes dadas al Marshal de El Paso, á que se refiere dicho telegrama, si es que tales órdenes existen, y que se suspenda toda clase de procedimientos sobre el particular.

Con este motivo me es grato reiterar á Usted, Excelentísimo Señor, las seguridades de mi más alta consideración.

ENRIQUE CREEL.

A Su Excelencia
ELIHU ROOT,
etc., etc., etc.

[Translation.]

EMBASSY OF MEXICO,
TO THE UNITED STATES OF AMERICA,
WASHINGTON, *March 21, 1907.*

No. 26.

Most Excellent Sir:

Pursuant to our discussion of the "El Chamizal" at the interview I had the honor to have with you this morning, I inform you that I have received from the Secretary of Foreign Relations of my country a telegram which reads word for word, as follows:

"Mexican Boundary Commissioner at Ciudad Juarez reports to me that several residents of lands included within "El Chamizal" have called upon him urgently asking for his aid and advice as to the attitude they should assume toward an order of immediately to vacate their property which has been given to over fifty families by the Marshal of El Paso, a federal officer of the United States. They seem to be inclined to resist by main force as they believe they are on their own land and under Mexican jurisdiction as long as the pending international question is not settled. You will please make this known to the Department of State to the end that the orders issued to the Marshal, if any such exist, be withdrawn and proceedings of any nature be suspended."

By virtue of the instructions my Government is pleased to give me in the above quoted telegram, I beg that you may see fit to move the proper authorities to withdraw the orders issued to the Marshal at El Paso referred to in the said telegram, if any such orders are in existence, and to suspend all further proceedings in the matter.

I take pleasure on this occasion to renew to you most Excellent Sir, the assurances of my highest consideration.

ENRIQUE C. CREEL.

To His Excellency ELIHU ROOT,
etc., etc., etc.

Mr. Bacon to Señor Creel.

No. 17. DEPARTMENT OF STATE,
WASHINGTON, *March 26, 1907.*

Excellency:

I have the honor to acknowledge the receipt of your note of the 21st instant, stating that the United States Marshal at El Paso, Texas, had notified more than fifty families of the Chamizal tract

to vacate their property, and asking that the appropriate authorities be requested to withdraw the orders issued to the Marshal and that all proceedings be suspended until the pending case is settled.

In reply I beg to say that the matter is having consideration.

Accept, Excellency, the renewed assurances of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency,
Senor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *25 de marzo de 1907.*

Número 28.

Excelentísimo Señor:

Con referencia á mi nota de 21, relativa á la queja que se ha presentado por varios vecinos de los terrenos comprendidos en el Chamizal, respecto á una orden de desalojamiento inmediato de sus propiedades que les ha prevenido el marshal de El Paso, Texas, tengo la honra de trascribir á Usted un telegrama fechado ayer, que me ha dirigido desde aquella ciudad el Señor F. B. Puga, Comisionado Mexicano de Límites, y que dice lo siguiente:

"Obedeciendo instrucciones superiores informo á Usted en caso Chamizal que el marshal cercó ayer terreno con alambre puas encerrando ahi familias y fijando rótulos que dicen: "This enclosure is in the hands of the U. S. marshal and trespassing is forbidden" en este momento él y un ayudante están arrojando afuera muebles, habitantes y clavando las puertas."

En vista de lo urgente del caso suplico á Usted, que si no hay inconveniente para ello, se sirva recabar de quién corresponda una orden para que el marshal de El Paso suspenda desde luego los procedimientos que ha iniciado y que se describen en el preinserto telegrama.

Renuevo á Usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

ENRIQUE CREEL.

Á Su Excelencia ELIHU ROOT,
etc., etc., etc.,

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

No. 28. WASHINGTON, *March 25, 1907.*

Most Excellent Sir:

With reference to my note of the 21st relative to the complaint made by several occupants of lands comprised within the Chamizal touching an order to vacate immediately their property, notified to them by the marshal of El Paso, Texas, I have the honor to quote a telegram, dated yesterday, sent me from that city by Señor F. B. Puga, Mexican Boundary Commissioner, and reading as follows:

"In obedience to superior instructions I inform you, *in re* Chamizal, that the marshal yesterday put up a barbed wire fence around the place, hemming in families and posted notices stating: "This enclosure is in the hands of the U. S. Marshal and trespassing is forbidden." At this moment he and an assistant are throwing out furniture and occupants and are nailing the doors."

Owing to the urgency of the case I beg you, if there be no objection thereto, to be pleased to procure from the proper quarter an order for the marshal of El Paso immediately to suspend the proceedings instituted by him and described in the above quoted telegram.

I renew to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

ENRIQUE CREEL.

His Excellency
ELIHU ROOT.
etc., etc., etc.

Mr. Bacon to Señor Creel.

No. 20.

DEPARTMENT OF STATE,
WASHINGTON, *March 26, 1907.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 28, of the 25th instant, in which you quote a telegram, dated the 24th instant, sent to you by the United States and Mexican (Water) Boundary Commissioner, stating that the United States Marshal at El Paso, Texas, is ejecting Mexican occupants of lands on El Chamizal banco, on the Rio Grande. You request that orders be [redacted] the latter at once to stop his proceedings.

In reply I have the honor to inform you that the Department is in receipt of a letter, dated the 25th instant, from the Acting Attorney General, in which he says that he has sent to the Marshal the following telegram:

"State Department upon complaint of Mexican government makes inquiries concerning your notice to residents of tract known to Mexicans as El Chamizal near El Paso to vacate their property. This land is claimed by Mexico as well as the United States, and the pending international and political question regarding it is still unsettled. Report the facts at once by telegraph, and if you are proceeding to dispossess as stated, advise me by what authority you assume to take this action."

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON
Acting Secretary.

His Excellency
Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Mr. Bacon to Señor Creel.

No. 24.

DEPARTMENT OF STATE,
WASHINGTON, *April 1, 1907.*

Excellency:

Referring to your note No. 26, of the 21st ultimo, and to subsequent correspondence, in regard to the notice given by the United States Marshal to Mexican residents on El Chamizal Banco, near El Paso, Texas, to vacate lands held by them there, I have the honor to enclose herewith, for your information, a copy of a letter from the Attorney General, stating that he has given appropriate instructions to the United States Attorney and the United States Marshal for that district, and enclosing copies of those instructions. I also enclose a copy of the Department's letter to the Attorney General, to which his letter is a reply.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency
Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Enclosures:
To Attorney General, March 29, 1907.
From same, March 29, 1907, with two enclosures.

[Inclosure 1.]

Mr. Root to Mr. Bonaparte.

DEPARTMENT OF STATE,
WASHINGTON, *March 29, 1907.*

Honorable CHARLES J. BONAPARTE,
Attorney General.

SIR:

Referring to your letters of March 25th and March 26th, I beg to state the fact that the tract of land known as the Chamizal tract was one of the tracts the nationality of which was in dispute between the United States and Mexico and was submitted to the International Boundary Commission created under the treaty of December 24, 1890, between the United States and Mexico; that the question is still *sub judice* with that commission; that the Commission has decided a great number of cases, in some forty-eight of which the decision of the Commission has been formally approved by a further treaty, the ratification of which was advised by the Senate at its last session, and that the Commission has not yet been able to agree upon a determination in this particular case, which, with other cases, still remains before it.

It now appears that the United States Circuit Court is attempting to take jurisdiction of a suit between private parties of the very question which was under consideration by the Commission and has issued writs of sequestration under which citizens claiming title by grants from Mexico are being ejected from their property.

If this tract of land is still, as it undoubtedly once was, Mexican territory, of course, the Circuit Court of the United States has no jurisdiction whatever to take the action which it has taken. It would appear from the judgment in the case referred to (Warder v. Loomis, to be found in transcript of the record of the Supreme Court, referred to in 197 U. S. 619) that the action was taken under a misapprehension by the Court as to the facts above said and under the supposition that the United States had definitely determined for itself that it had title and the nationality of this tract and had closed all discussion upon the subject with Mexico. Of course, the action of the Court is itself a determination against the title of Mexico. It assumes the very thing which is in controversy, to wit, that this is United States soil.

This action undertaking to dispose of property which is the subject of conventional treatment between the two countries, raises a serious question and puts the United States in a position which

it cannot maintain. We cannot justify agreeing with Mexico upon a special tribunal to determine the title to this territory and then determine it ourselves in a proceeding which, so far as Mexico is concerned, is entirely *ex parte*, and which is taken without any reference whatever to Mexico or to the tribunal created by a convention between the two countries.

I have the honor to request that you will direct the Marshal of the Circuit Court of the United States immediately to desist from further proceedings to execute the writs issued under any judgment of the Circuit Court of the United States relating to this tract, and that you will direct the District Attorney to take proceedings, either by intervening in the original suit in behalf of the United States, or by separate suit to enjoin further action under this judgment pending the determination of the question of the nationality of the tract before the proper international tribunal.

Faithfully yours,

ELIHU ROOT.

[Inclosure 2.]

Mr. Hoyt to Mr. Root.

103530. DEPARTMENT OF JUSTICE,
WASHINGTON, *March 29, 1907.*

The SECRETARY OF STATE.

SIR:

I have the honor to acknowledge the receipt of your letter of today, relative to the action taken by the United States Marshal under certain writs of sequestration to dispossess Mexican occupants of tract of land known as El Chamizal near El Paso. In pursuance of your request, I have given appropriate instructions to the United States Attorney and the United States Marshal for that district, and I beg to enclose herewith, for your information, copies of the same.

Very respectfully,

H. M. HOYT,
Acting Attorney General.

[Sub-inclosure 1.]

Mr. Hoyt to Mr. Nolte.

DEPARTMENT OF JUSTICE.

103530.

March 29, 1907.

UNITED STATES MARSHAL,
San Antonio, Texas.

Referring to your telegram of March twenty-sixth you are hereby directed to desist from all further proceedings to execute writs of sequestration issued under any judgment of the Circuit Court of the United States relating to tract of land known as El Chamizal. Confer with United States Attorney, who has been instructed by mail, and await further instructions.

HOYT,
Acting Attorney General.

[Sub-inclosure 2.]

Mr. Hoyt to Mr. Boynton.

DEPARTMENT OF JUSTICE.

103530.

March 29, 1907.

CHARLES A. BOYNTON, Esq.,
United States Attorney, Waco, Texas.

SIR:

I enclose a copy of a letter received by the Department to-day from the Secretary of State, relative to proceedings taken by the United States Marshal under writs of sequestration issued out of the Circuit Court of the United States to dispossess occupants of a tract of land known as El Chamizal, which appears to be located in the suburbs of the city of El Paso.

I have no further information about the suit or suits in which these writs were issued, except as contained in the telegram from the Marshal, dated March 26, a copy of which I enclose herewith. I find an earlier case, however, namely, W. J. Warder, plaintiff, vs. Mrs. Laura Loomis et al., not reported, in which judgment was entered by Judge Maxey April 17, 1903, which appears to proceed upon the same theory, viz: that the United States Government and the State of Texas have been for many years exercising jurisdiction, civil and political, over the tract in question, and that title under the government of Mexico cannot be recognized. I also enclose a copy of Judge Maxey's judgment.

As you will see, however, from the letter of the Secretary of State, that is an entire misconception of the case. The question of the nationality of this tract and sovereignty over the same is still in dispute between the United States and Mexico, and is *sub judice* before the International Boundary Commission. The question of nationality is the very matter to be determined by the Commission, or otherwise through the proper diplomatic channels, and, being a political question, is not within the jurisdiction of the courts.

You are instructed, therefore, in accordance with the request of the Secretary of State, to appear before the Circuit Court and, either by intervention on behalf of the United States in the original suit above referred to, or in the pending causes, or else by separate action in the nature of a bill for a restraining order, take the necessary steps to suspend all proceedings and action pending the determination of the question at issue before the proper internation tribunal.

To this end I have to-day telegraphed the following instruction to the Marshal, with whom you are directed to confer and to cooperate:

"Referring to your telegram of March twenty-sixth, you are hereby directed to desist from all further proceedings to execute writs of sequestration issued under any judgment of the Circuit Court of the United States relating to tract of land known as El Chamizal. Confer with United States Attorney, who has been instructed by mail, and await further instructions."

You are also directed to report promptly your action taken under these instructions.

Respectfully, H. M. HOYT,
Acting Attorney General.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *2 de abril de 1907.*

Número 33.

Excelentísimo Señor:

Con sumo agrado me he impuesto, por la nota de Usted número 24, fechada ayer, y anexos, de la determinación de este Gobierno respecto al asunto del "Chamizal," que traté en mi comunicación de 21 del mes próximo y en otras posteriores.

Las indicaciones que Usted se sirvió hacer al Procurador General en su nota del 29, sobre que se suspendiera todo procedimiento respecto de los terrenos comprendidos en el "Chamizal" hasta que se resuelva la cuestión pendiente sobre derecho de propiedad entre ambos países y las instrucciones dadas en tal virtud por el Procurador General Interino al Marshal de los Estados Unidos, demuestran una vez más la justificación con que obra este Gobierno y el deseo que tiene de ajustar sus actos á los principios de justicia.

Sé muy bien que el Gobierno Mexicano apreciará en lo justo la deferencia y equidad con que ha obrado en este caso el de los Estados Unidos.

Me es muy grato con este motivo reiterar á Usted Excelentísimo Señor, las seguridades de mi más alta consideración.

ENRIQUE CREEL.

Á Su Excelencia ELIHU ROOT,
etc., etc., etc.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

WASHINGTON, *April 2, 1907.*

No. 33.

Most Excellent Sir:

I have been highly gratified to learn from your note No. 24, of yesterday, and its accompaniments, your Government's decision regarding the Chamizal case, with which I dealt in my communication of the 21st ultimo and subsequent ones.

The suggestions you were pleased to make to the Attorney General in your letter of the 29th as to a stay of all proceedings concerning the lands included in the Chamizal until the pending question between the two countries as to the right of ownership shall have been decided and the instructions given accordingly by the Acting Attorney General to the Marshal of the United States demonstrate once more the sense of justice which actuates Your Government and its desire to conform its acts to the principles of justice.

I am well aware that the Government of Mexico will duly appreciate the deferential and equitable course of the United States in the case.

I take great pleasure in renewing to Your Excellency on this occasion the assurances of my highest consideration.

ENRIQUE CREEL.

To His Excellency ELIHU ROOT
etc., etc., etc.

Mr. Root to Señor Creel.

DEPARTMENT OF STATE,
WASHINGTON, *April 18, 1907.*

My dear Mr. AMBASSADOR:

Referring to the Department's note No. 24, of the 1st instant, I have now to inform you that the Department is in receipt of a letter, dated the 14th instant, from the Attorney General, informing the Department that the Circuit Court at El Paso, Texas, entered orders, on the 13th instant, staying all further proceeding or issuance and execution of process in all cases involving El Chamizal tract, until further ordered by the Court, and has continued the cases as to all parties except one against six defendants who were merely squatters holding under no color of title, and who had all filed sworn disclaimers; and that, even in this case, the Court has stayed issuance of the writ of possession until further ordered by the Court.

I am, my dear Mr. Creel,
Very truly yours,

ELIHU ROOT.

His Excellency
Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

CORRESPONDENCE RELATING TO FIFTY-ONE THREATENED EVICTIONS.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON *17 de junio de 1907.*

Número 70.

Excelentísimo Señor:

Con referencia á la correspondencia cruzada entre esta Embajada y el Departamento del digno cargo de Usted, y especialmente á la nota de Usted número 24, fechada el 1° de abril último, sobre

el particular, tengo la honra de informar á Usted que cincuenta y un individuos que viven en los terrenos del Chamizal se han dirigido por telégrafo á la Secretaría de Relaciones Exteriores de mi país, quejándose de haber recibido orden estricta de las autoridades locales para que desocupen sus casas dentro de diez días.

Por lo tanto, por instrucciones de mi Gobierno, suplico á Usted que, si no hay inconveniente para ello, se sirva recabar de quién corresponda una orden ú órdenes para suspender todo procedimiento en esos casos, entretanto no se resuelvan conforme á las estipulaciones que se firmen entre los dos gobiernos, y se determine la cuestión de la nacionalidad de los terrenos ante el propio tribunal internacional.

Me es grato reiterar á Usted, Excelentísimo Señor, las seguridades de mi más alta consideración.

ENRIQUE CREEL.

Excelentísimo Señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

No. 70. WASHINGTON, *June 17, 1907.*

Most Excellent Sir:

With reference to the correspondence exchanged between this Embassy and the Department in your worthy charge and, especially, to your note No. 24, dated April 1 last, on the subject, I have the honor to inform you that fifty-one persons who live on the Chamizal lands have addressed by telegraph to the Department of Foreign Relations of my country, a complaint that they have received from the local authorities strict orders to vacate their houses within ten days.

By direction of my Government I ask, in consequence, that you be pleased, if there be no objection thereto, to obtain in the proper quarter an order or orders to stay all proceedings in these cases, pending a settlement in conformity to such stipulations as may be signed by both Governments and a determination of the nationality of the land before the proper international tribunal.

I take pleasure in renewing to you, Most Excellent Sir, the assurances of my highest consideration.

ENRIQUE C. CREEL.

His Excellency ELIHU ROOT,
Secretary of State of the United States of America.

Mr. Adee to Señor Creel.

DEPARTMENT OF STATE,
No. 56. WASHINGTON, *June 24, 1907.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 70, of the 17th instant, informing the Department that fifty-one Mexicans living on El Chamizal tract have been ordered by the local authorities to vacate their houses within ten days; and requesting a stay of all proceedings until there is a settlement of the question by agreement between the two governments, and the nationality of the land has been determined by the proper international tribunal.

In reply I have the honor to inform you that your note was communicated to the Attorney General on the 19th instant. An answer was received from him on the 21st instant, reading as follows:

"The Department is just in receipt of the following telegram from the United States Attorney at Waco, Texas, in regard to the Chamizal cases:

" 'Reporting regarding matter referred to in your telegram of the twentieth. I am advised as result of investigation by Assistant United States Attorney at El Paso that no notices to vacate have been issued by any court or other official source to persons living on Chamizal tract; that administrator of Cotton estate is issuing notices to some Mexicans on said tract but only in private capacity preparatory to possibly instituting later in Justice Court forcible entry and detainer proceedings as between landlord and tenant, involving right of possession as between said estate and tenant, but in no way affecting question of title.' "

Accept, Excellency, the renewed assurance of my highest consideration.

ALVEY A. ADEE,
Acting Secretary.

His Excellency,
Senor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

CORRESPONDENCE RELATING TO THE CASE OF WARDER VS. COTTON, BEFORE THE SUPREME COURT OF THE UNITED STATES.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *28 de Octubre de 1907.*

No. 58

Excelentísimo Señor:

Ampliando los datos que esta tarde tuve la honra de exponer personalmente ante el Departamento del digno cargo de Usted, acerca del caso pendiente en la Suprema Corte de los Estados Unidos que envuelve la cuestión de límites en El Chamizal, tengo la honra de manifestar á Usted que ese caso es el de W. J. Warder, T. S. Austin y J. E. Terry que apelan en contra de Frank B. Cotton, individualmente y como fideicomisario, caso que se verá probablemente dentro de pocos días ante ese alto tribunal y que, como ya dije, comprende la cuestión de límites del Chamizal y la de avulsión y acreción en el Río Bravo.

Como ya me permití indicar, suplico á Usted, por instrucciones de mi Gobierno, que el Departamento del digno cargo de Usted, de la manera que estime más conveniente y como ya lo ha hecho en casos parecidos ante los tribunales de este país, intervenga ante dicha corte, á fin de que ella suspenda todo procedimiento y difiera su decisión en en caso indicado, hasta que el asunto del Chamizal haya sido arreglado diplomáticamente y por el fallo de la comisión arbitral que ha de establecerse.

Me es grato reiterar á Usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América,
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

WASHINGTON, *October 28, 1907.*

No. 58.

Most Excellent Sir:

With further reference to the data I had the honor to place personally before the Department in your worthy charge, this afternoon, in connection with the case pending before the Supreme Court of the United States which involves the El Chamizal boundary question, I have the honor to inform you that the case is that of W. J. Warder, T. S. Austin and J. E. Terry, in appeal, versus Frank B. Cotton, personally and as trustee, and that it will probably come before that high tribunal within a few days and, as already stated, comprise the Chamizal boundary question and that of avulsion and accretion along the Rio Grande.

As I ventured to suggest, I beg, by order of my Government, that the Department in your worthy charge will, in such manner as it may deem most expedient and as it has already done in similar cases before the courts of this country, intervene before the said court to the end that it stay all proceedings and postpone its decision in the case until the Chamizal question shall have been settled diplomatically and through the award of the Board of Arbitration that is to be constituted.

I have pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

His Excellency ELIHU ROOT,
Secretary of State of the United States of America.

Mr. Root to Señor Godoy.

DEPARTMENT OF STATE,
WASHINGTON, *November 5, 1907.*

SIR:

I have the honor to acknowledge the receipt of your note, No. 58, of the 28th ultimo, stating that the case of W. J. Warder, T. S. Austin, and J. E. Terry, in appeal, versus Frank B. Cotton, personally and as trustee, which involves the Chamizal boundary question and that of avulsion and accretion along the Rio Grande, will probably come before the Supreme Court of the United States within a few days. By direction of your Government you request

the Department to intervene before the Court, to the end that the Court stay all proceedings and postpone its decision in the case until the Chamizal question shall have been settled diplomatically and through the award of the board of arbitration that is to be constituted.

In reply I have the honor to say that, inasmuch as the suit of Warder et al. versus Cotton relates to land north of the line of 1852 as well as to land south of that line, it is not considered to be fair for the Government to interfere in the case in the Supreme Court.

The defendants in error, who were plaintiffs below in the case, have stipulated that they will not proceed upon their judgment below, so far as it relates to land jurisdiction over which has been claimed by the Mexican Government, except so far as it may be necessary to preserve their present possession, pending the settlement of the question between the two Governments.

Accept, Sir, the renewed assurances of my high consideration.

ELIHU ROOT.

Señor Don José F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA
WASHINGTON, 7 *de Noviembre de 1907.*

No. 69.

Excelentísimo Señor:

He tenido la honra de recibir la nota de Usted número 118, fechada el 5 del actual, en que se sirve darme á conocer las razones en virtud de las cuales no considera Usted que el Departamento que está á su digno cargo pueda intervenir en el caso de W. J. Warder, T. S. Austin y J. E. Terry, apelantes contra Frank B. Cotton, personalmente y en su calidad de fideicomisario, caso que implica la cuestión de límites del Chamizal y la de avulsión y acreción á lo largo del Río Bravo, y que estará á la vista próximamente en la Suprema Corte de los Estados Unidos.

En contestación tengo la honra de manifestar á Usted, que ya transcribo su nota á mi Gobierno para su conocimiento y fines á que haya lugar.

Me es grato reiterar á Usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

WASHINGTON, *November 7, 1907.*

No. 69.

Most Excellent Sir:

I have had the honor to receive your note No. 118, dated the 5th instant, by which you acquaint me with the reasons for which you do not think that the Department under your worthy charge can intervene in the case of W. J. Warder, T. S. Austin and J. E Terry, appellants, versus Frank B. Cotton personally and in his capacity as trustee, which involves the Chamizal boundary question and that of the avulsion and accretion along the Rio Grande which is soon to come before the Supreme Court of the United States.

In reply I have the honor to inform you that I am forwarding a transcription of your note to my Government for its information and all other pertinent purposes.

I take pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

The Most Excellent ELIHU ROOT
Secretary of State of the United States of America
Present.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

No. 75.

WASHINGTON, *13 de Noviembre de 1907.*

Excelentísimo Señor:

Con referencia á las gestiones hechas por esta Embajada ante el Departamento del digno cargo de Usted para la suspensión del caso de Warder y otros contra Cotton, pendiente en la Suprema

Corte de los Estados Unidos y á la nota de Usted número 118, fechada el 5 del actual, sobre el particular, tengo la honra de informar á Usted que, según me comunican, los abogados de los reclamantes mexicanos en ese caso consideran que hay alguna equivocación al creer que el asunto á que se refiere ese caso versa sobre terrenos que están al Norte de la línea de 1852 y á la vez sobre terrenos que yacen al Sur de dicha línea. Los expresados abogados aseguran que según el expediente de este caso en las páginas 8 y 9 está demostrado que los apelantes en la Suprema Corte no reclaman nada respecto de los terrenos al Norte de dicha línea y que los derechos que ellos defienden se refieren simplemente á los terrenos al Sur de la misma línea.

Al poner lo anterior en el conocimiento de Usted, me es grato reiterarle, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

ENRIQUE CREEL.

Excelentísimo Señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América,
Presente.

[Translation]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

No. 75. WASHINGTON, *November 13, 1907.*

Most Excellent Sir:

With reference to the steps taken by this Embassy with the Department in your worthy charge regarding a stay of proceedings in the case of Warder *et al. vs* Cotton, pending before the Supreme Court of the United States and to your note No. 118 of the 5th instant on the subject, I have the honor to inform you that I am told by the counsel of the Mexican plaintiffs in the case that they believe there must be some error in thinking that the case has to do with lands lying both north and south of the 1852 line. The said Counsel assert that as shown on pages 8 and 9 of the record of the case the appellants in the Supreme Court claim nothing as regards lands north of the said line and that the rights they vindicate only affect lands south of the same line.

In bringing the foregoing to your knowledge I take pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

ENRIQUE CREEL

The Most Excellent ELIHU ROOT,
Secretary of State of the United States of America.

Mr. Root to Señor Creel.

No. 169. DEPARTMENT OF STATE,
WASHINGTON, *January 20, 1908.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 75, of November 13 last, in which, referring to the Department's note No. 118, of the 5th of that month, regarding the stay of proceedings in the case of Warder et al. vs Cotton, pending before the Supreme Court of the United States, you state that the counsel of the Mexican plaintiffs in the case inform you that the land in dispute lies south of the 1852 line and not both north and south of that line.

It is true that in the case of Cotton vs Warder et al. in the Circuit Court of the United States for the Western District of Texas, the defendants, as shown on pages 8 and 9 of the record, do, in terms, desclaim any interest in lands "lying north of the old channel of the Rio Grande, as the said channel was, at the date of the treaty of Guadaloupe-Hidalgo, between the United States of America and Mexico."

When, however, in the course of the trial, as shown by the record on page 42, it became necessary to offer evidence as to the actual location of the line of 1852 upon the face of the earth, the defendants maintained and offered evidence tending to show that the said line is located considerably in the north of its actual location, as shown by the map on page 97, Volume 1, of the proceedings of the International Water Boundary Commission. That is, the defendants, although admitting that they had no claim above the line of 1852, refused to accept the location of the line of 1852, as determined by the two Governments, thereby disputing the title of the plaintiffs to property to which, as far as the two Governments are concerned, is undisputed American territory.

The claim of the defendants may, perhaps, be more easily understood by reference to the enclosed map, which the Department is informed by the Executor of the Cotton estate was obtained from Mr. Warder personally, and which, as the Department is advised, the defendants have circulated in large numbers. A glance at this map will show that the line of 1852, as drawn on this map, crosses the Cotton estate in a diagonal direction, substantially from Overland to San Antonio streets, considerably to the north of the actual location of the line, which, in fact, crosses diagonally from about opposite Second street, as shown by the map of the International Boundary Commission.

Moreover, this Department is in possession of an affidavit made by the Executor for the Cotton estate, stating that in the triangle formed between the line as drawn by the International Boundary Commission of 1852 and as claimed by the defendants in the suit of Cotton vs Warder et al., that is, on land the title to which is not in dispute between the United States and Mexico, but which is in dispute between the Cotton estate and Warder et al., Warder has placed tenants or squatters who dispute the title of the Cotton estate. One of the principle objects of the suit of Cotton vs Warder et al. was to eject these squatters who claim under Warder on land which is claimed by Warder but which is north of the line of 1852 as shown by the official map of the Water Boundary Commission.

It was doubtless in view of this contention on the part of the defendants and other, that the International Boundary Commission, on December 11, 1907, issued a formal statement defining the limits of the territory in dispute between the two Governments, a copy of which statement, together with a copy of General Mills' letter of transmittal, is herewith enclosed.

For these reasons the Department is constrained to believe that the attorneys for Warder are in error in representing that no land north of the line in 1852 was in dispute in the suit of Cotton vs Warder et al.

Accept, Excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Enclosures:
Map, above described.[a]
Letter from Gen. Anson Mills,
Jan. 10, 1908, with one enclosure.

---

[a] [Map omitted.—Agent's note.]

Gen. Mills to Mr. Root.

DEPARTMENT OF STATE.
INTERNATIONAL (WATER) BOUNDARY COMMISSION.
UNITED STATES AND MEXICO.

WASHINGTON, D. C., *January 10, 1908.*

The Honorable,
The SECRETARY OF STATE.

SIR:

I have the honor to enclose herewith copy of a statement made by the Joint Commission and published in the newspapers of El Paso, Texas.

The El Chamizal Title Company of El Paso have been circulating literature and maps setting forth that the area in dispute is much larger than that actually claimed by Mexico and this statement was made by the Joint Commission in order that the property owners in El Paso might know officially the exact location and area of the land in dispute.

I have the honor to be, Sir,

Very respectfully,
Your obedient servant,

ANSON MILLS,
American Commissioner.

[Translation.]

The International Boundary Commission between the United States and Mexico desires to give notice to all parties interested in the land known as "El Chamizal" that all pretension that the northern limit of the area in dispute is other than the middle of the channel of the Rio Grande of 1852 is unfounded and contrary to the facts and technical data recognized by both governments. The position of the river at that date is shown in red on the map on page 97 of the publication called "Proceedings of the International (Water) Boundary Commission, United States and Mexico," and all interested parties may consult this report at the offices of the Commission if they are so disposed. The office of the Mexican Section is in the Masonic Building, Rooms 4 to 6, and

the American Section is in the Guarantee Trust Building, Rooms 421 to 423.

ANSON MILLS,
American Commissioner.
F. B. PUGA,
Mexican Commissioner.

EL PASO, TEXAS, *December 11, 1907.*

A true copy:
WILBUR KEBLINGER,
Secretary, American Section.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA
WASHINGTON, *23 de Enero de 1908.*

N°. 124.

Excelentísimo Señor:

He tenido la honra de recibir la nota de Usted número 169, fechada el 20 del actual y anexos, todo referente al juicio y procedimientos en el caso de Warder y otros contra Cotton, pendiente ante la Suprema Corte de los Estados Unidos.

En contestación me permito manifestar á Usted que ya pongo el contenido de dicha nota y anexos en conocimiento de mi Gobierno, para los fines á que haya lugar.

Me es grato reiterar á Usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo Señor
ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.
WASHINGTON, *January 23, 1908.*

No. 124.

Most Excellent Sir:

I have had the honor to receive your note No. 169, dated the 20th instant and its accompaniments, all relating to the hearing and proceedings in the case of Warder and others versus Cotton, pending before the Supreme Court of the United States.

In reply I beg leave to say that I am acquainting my Government with the contents of the said note and enclosures, for all pertinent purposes.

I take pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

José F. Godoy.

Most Excellent
Mr. Elihu Root
Secretary of State of the United States of America.
Present.

Señor Godoy to Mr. Root.

Embajada de México
en los
Estados Unidos de América

N. 144. Washington, *24 de Febrero 1908.*

Excelentísimo Señor,

Refiriéndome á la nota de Usted, número 169, fecha 20 de Enero último, relativa al caso de Warder y otros vs. Cotton, en que, al contestar á la nota de esta Embajada, número 75, fecha 13 de Noviembre próximo pasado, manifiesta Usted que ese Departamento se ve obligado á creer que los abogados de Warder se equivocan al asegurar que ningún terreno al Norte de la línea de 1852 estaba en disputa en el juicio de Cotton contra Warder y otros, tengo la honra de poner en conocimiento de Usted que mi Gobierno me comunica que si bien es cierto que en el resto de El Chamizal difiere notablemente la verdadera posición del Río Bravo en 1852, tal como se deduce de las notas de campo originales de Salazar y Emory, de la que pretenden asignarle Warder, Clarke, Cameron y socios, no lo es menos que en la zona particular llamada "Cotton Addition" casi se confunde y que el litigio citado envuelve una área muy considerable de las tierras que quedan al Sur de la verdadera posición del río de 1852.

Mi Gobierno me manifiesta además que la pretensión de Warder y socios á toda la parte de El Chamizal que quede al Norte de la posición del río en 1852, oficialmente definida en planos internacionales, es enteramente ajena á México, quien no sostiene, ni puede sostener, derecho alguno en esta disputa, sino á la región que está al Sur de la citada verdadera posición del Río Bravo en 1852, y á esta región Sur es á la que se refería la representación del Gobierno en el caso de Warder vs. Cotton, sin intervenir en lo más

mínimo en la zona Norte de la "Cotton Addition," que por ahora no se halla sometida á controversia internacional ninguna.

Mi Gobierno cree, por tanto, tener razón al pedir que se suspenda todo fallo judicial, ó expropiación prematura, en la parte considerable de la "Cotton Addition" que queda comprendida entre el río actual y la posición que tuvo en 1852, señalada en el plano que se halla en la página 97 del volumen 1 de las Actas de la Comisión Internacional de Límites Fluviales.

Añade mi Gobierno que, en su concepto, es cierto que varios advenedizos (squatters) han tomado posesión de los terrenos en disputa; pero que esa circunstancia no altera la gravedad del hecho esencial de que los tribunales americanos estén dando indebida posesión de propiedades en disputa internacional, pendiente de arreglo amistoso, á ciudadanos americanos, antes de que se haya declarado la validez de su título.

Ruego á Usted acepte, Excelentísimo Señor, las seguridades de mi más alta y mi más distinguida consideración.

José F. Godoy

Excelentísimo Señor
Elihu Root,
Secretario de Estado de los Estados Unidos,
etc, etc, etc.

[Translation.]

Embassy of Mexico
to the United States of America

Washington, *February 24, 1908.*

No 144.

Most Excellent Sir:

Referring to your note No. 169 dated the 20th of January last, relative to the case of Warder *et al. vs* Cotton, in which you say, in reply to this Embassy's note No. 73 of November 13 last, that your Department is constrained to believe that the counsel of Warder are in error when they assure that no land lying north of the 1852 line is in dispute in the suit of Cotton against Warder *et al*, I have the honor to inform your Excellency that my Government tells me that while it is true that the true location of the Rio Grande in 1852, as shown in Salazar and Emory's field notes, is notably different in the remainder of the Chamizal from that assigned to it by Warder, Clarke, Cameron and associates, it is equally true that in the particular zone known as the "Cotton

Addition" it is nearly the same and that the litigation embraces a very large area of land lying south of the true location of the river in 1852.

My Government further tells me that the claim of Warder and his associates to that part of the Chamizal which lies north of the location of the river in 1852 as officially defined in international maps, does not in any way concern Mexico which does not and cannot vindicate any right in that dispute, but not so as regards the territory lying south of the aforesaid true location of the Rio Grande in 1852 and that southern region is that to which the Government's representations referred in the case of Warder *vs* Cotton without in the least meddling with the northern zone of the "Cotton Addition" which is not at present the subject of any international controversy.

My Government therefore believes it is justified in asking the suspension of any judicial decision or premature expropriation in that large part of the "Cotton Addition" comprised between the present and the 1852 location of the river as shown in the plan on page 97 of Volume I of the Acts of the International Water Boundary Commission.

My Government adds that, in its opinion it is true that several "advenedizos (squatters)" have taken possession of the lands in dispute, but that this circumstance does not affect the gravity of the essential fact that American Courts are granting undue possession of property in international dispute, pending an amicable arrangement, to American Citizens, before the validity of the title has been pronounced.

I beg you to accept, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

Most Excellent Mr. ELIHU ROOT,
Secretary of State of the United States of America.

Mr. Bacon to Señor Godoy.

DEPARTMENT OF STATE,
WASHINGTON, *March, 11, 1908.*

Serial No. 205.

SIR:

I have the honor to acknowledge the receipt of your note No. 144, of the 24th ultimo, stating that your Government lays no claim to land north of the old bed of the Rio Grande in 1852, as

officially defined in international maps; but believes it is justified in asking for the suspension of all judicial discussion and acts in regard to the large part claimed south of the said line, in the Warder case.

The Department feels satisfaction in knowing that your Government concurs so entirely with its views as to the light in which the legal proceedings in the case of Warder v Cotton should be regarded, in so far as these proceedings related to the title to lands north of the international boundary line as fixed in 1852 and as shown on the map, page 97, vol. 1, of the report of the International Boundary Commission.

In so far as the suit in question related to lands south of that line, it should be observed that it is believed that the action of this Department in taking a stipulation from the defendants in error in the above-mentioned case, as stated in the Department's note of November 5, 1907, amounts to a substantial compliance with the views of your Government, at the same time that it avoids interference with the undisputed rights of American citizens to litigate the title to land admittedly American territory.

Accept, Sir, the renewed assurance of my high consideration.

ROBERT BACON,
Acting Secretary.

Señor Don José F. GODOY,
Chargé d'Affaires ad interim of Mexico.

CORRESPONDENCE RELATING TO CERTAIN THREATENED EJECTMENT PROCEEDINGS.

Señor Creel to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON *7 de Enero de 1908.*

No. 116.

Excelentísimo Señor:

Con referencia á los antecedentes en el asunto de El Chamizal, tengo la honra de informar á Usted que un grupo de personas que ocupan lotes y casas en los terrenos en disputa en El Paso, Texas, se quejan de que nuevamente se trata de lanzarlos de dichos lotes y casas.

Por instrucciones de mi Gobierno, tengo la honra de suplicar á Usted se sirva recabar, si no hay inconveniente para ello, una órden ú órdenes de quien corresponda, como ya hizo anteriormente en casos parecidos, á fin de que se suspenda nesos actos, por estar pendiente el arreglo ó tratado de arbitraje que, como Usted sabe, pondrá fin á la citada cuestión del Chamizal.

Me es grato renovar á Usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

ENRIQUE CREEL.

Excelentísimo Señor ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

WASHINGTON, *January 7, 1908.*

No. 116.

Most Excellent Sir:

With reference to previous correspondence *in re* El Chamizal, I have the honor to inform you that a number of persons who occupy lots and dwellings on the disputed land at El Paso, Texas, are complaining that a renewed effort is made to eject them from the said lots and dwellings.

By direction of my Government, I have the honor to beg that, in the absence of any objection thereto, you may be pleased to have the order or orders issued from the proper quarter, as has been previously done in like cases, to suspend all such proceedings, in view of the pendency of the agreement or treaty of arbitration which, as you are aware, is to close this Chamizal question.

I have pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

ENRIQUE CREEL.

His Excellency, Mr. ELIHU ROOT,
Secretary of State of the United States of America.
Present.

Mr. Bacon to Señor Creel.

DEPARTMENT OF STATE,
WASHINGTON, *January 10, 1908.*

Excellency:

I have the honor to acknowledge the receipt of your note of the 7th instant, in which, with reference to "El Chamizal" question, you ask, by direction of your Government, the issuance by the proper authority of an order to suspend ejection proceedings, of which certain persons occupying lots and dwellings in the Chamizal district are again complaining.

In reply I have the honor to advise you that the matter has been referred to the Attorney General for investigation.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency,
Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Mr. Bacon to Señor Creel.

No. 167.

DEPARTMENT OF STATE,
WASHINGTON, *January 16, 1908.*

Excellency;

I have the honor to acknowledge the receipt of your note No. 116, of the 7th instant, in which, with reference to "El Chamizal" question you request that orders be issued by the proper authority for the suspension of ejectment proceedings, of which certain persons occupying lots and dwellings in the Chamizal district are again complaining.

In reply I have the honor to say that the Department would be pleased if you would specify the location of the lands from which, as you are informed, Mexican claimants are being ejected.

It is particularly desired that the Department be advised whether or not the lands from which the complainants allege that they are being ejected lie south of the line of 1852, as shown on page 97 of Volume 1 of the proceedings of the International Boundary Commission.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT BACON,
Acting Secretary.

His Excellency,
Señor Don ENRIQUE C. CREEL,
Ambassador of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA
WASHINGTON, *10 de Abril de 1908.*

N° 172.

Excelentísimo señor:

Con referencia á los antecedentes en el asunto de El Chamizal, y especialmente á la nota del Departamento del digno cargo de usted número 205, fechada el 11 del mes próximo pasado, tengo la honra de suplicar á usted, por instrucciones especiales de mi Gobierno que, si no hay inconveniente para ello, se sirva dictar sus órdenes, á fin de que por el conducto debido, se suspenda la orden expedida para el trece del actual, por el Juez Cuarto en El Paso ó Laredo, y todo procedimiento de cualquiera otra autoridad judicial ó administrativa, para el lanzamiento de ciudadanos mexicanos ocupantes de la parte de El Chamizal reclamada por Cotton, pues hoy está en litigio internacional.

En vista de que la orden á que hago referencia se debe hacer efectiva el trece de este mes, me tomo la libertad de suplicar á usted que las medidas que se dicten para suspender los procedimientos de lanzamiento á que aludo, se trasmitan y lleven á efecto por la vía telegráfica.

Me es grato, Excelentísimo señor, reiterar á usted las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo señor
ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA
WASHINGTON, *April 10, 1908.*

No. 172.

Most Excellent Sir:

With reference to previous correspondence in the El Chamizal matter and, especially, to the note from the Department in your worthy charge numbered 205 and dated the 11th of last month,[a] I have the honor, under special instructions of my Government to beg that, in the absence of any objection, you will issue your orders to the end that the order issued for the thirteenth of this month by Judge Cuarto at El Paso or Laredo be suspended, through the proper channel, as well as any proceeding of any other authority, judicial or executive, toward the ejection of Mexican citizens occupants of that part of El Chamizal which is claimed by Cotton, as this is now the subject of international litigation.

As the order herein referred to is to be carried out on the 13th of this month, I take the liberty of asking that such measures as may be ordered for a stay of the ejectment proceedings here referred to, be transmitted and carried out by telegraph.

I have pleasure, Most Excellent Sir, in renewing to you the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY

Most Excellent Mr. ELIHU ROOT,
Secretary of State of the Unites Stated of America.
Present.

Mr. Bacon to Señor Godoy.

Serial No. 222.

DEPARTMENT OF STATE,
WASHINGTON, *April 15, 1908.*

SIR:

In answer to your note No. 172, of the 10th instant, in which, referring to previous correspondence in the matter of the threatened eviction of Mexican citizens from the disputed Chamizal tract, you request that the order of eviction be suspended, as the matter is now the subject of international litigation, I have the honor to inform you that the Department immediately telegraphed to the Department of Justice, requesting that Department to direct its

[a] [For this note see supra, p. 473.—Agent's note.]

local representative to make an investigation and take all appropriate steps in the premises.

The Department is in receipt of the following telegram, in reply, dated the 11th instant, from the Attorney General:

"Your telegram of this date relative to matter of ejectment of Mexican citizens from disputed Chamizal tract is received and the United States Attorney at Waco, Texas, has been instructed as requested."

Accept, Sir, the renewed assurances of my high consideration.

ROBERT BACON,
Acting Secretary.

Señor Don JOSÉ F. GODOY,
Charge d'Affaires ad interim of Mexico.

CORRESPONDENCE RELATING TO THE MAINTENANCE OF THE STATUS QUO IN GENERAL.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA
WASHINGTON, *30 de abril de 1908.*

No°. 185.

Excelentísimo señor:

Por instrucciones especiales de mi Gobierno tengo la honra de reiterar, con referencia al asunto de El Chamizal, la necesidad de que por parte de las autoridades judiciales ó administrativas de El Paso, Texas, se suspenda todo procedimiento de desocupación ó lanzamiento contra los mexicanos que ocupan los citados terrenos de El Chamizal, que en la actualidad están en litigio internacional.

Manifiesto á usted también que, según me anuncia el señor Ministro de Relaciones Exteriores de mi país, muy pronto recibiré nuevas instrucciones de mi Gobierno para el definitivo y violento arreglo de ese delicado asunto.

Me es grato reiterar á usted, Excelentísimo señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo señor
ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

WASHINGTON, *April 30, 1908.*

No. 185.

MOST EXCELLENT SIR:

Under special instructions of my Government, I have the honor to reiterate, in the El Chamizal matter, the necessity of the judicial or administrative authorities of El Paso, Texas, staying all proceedings of eviction or ejectment against the Mexican occupants of the said Chamizal lands, which are at present in international litigation.

I further have to say that I am advised by the Minister of Foreign Relations of my country that I shall very soon receive fresh instructions from my Government for the final and speedy settlement of this delicate question.

I have pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

His Excellency ELIHU ROOT,
Secretary of State of the United States of America.
Present.

Mr. Root to Señor Godoy.

Serial No. 238.

DEPARTMENT OF STATE,
WASHINGTON, *May 5, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 185, of the 30th ultimo, in which you urge the necessity of the judicial or administrative authorities of El Paso, Texas, staying all proceedings of eviction or ejectment against the Mexican occupants of El Chamizal lands, which are at present in international litigation.

You add that you are advised by the Mexican Minister for Foreign Relations that you will very soon receive fresh instructions from your Government for the final and speedy settlement of this delicate question.

In reply I have the honor to say that a copy of your note has been sent to the Attorney General, with the statement that this Department would be pleased if appropriate instructions could be sent to the United States District Attorney in El Paso, Texas, to

make such investigation and take such steps as may seem consistent to comply with your request.

Accept, Sir, the renewed assurance of my high consideration.

ELIHU ROOT.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Mr. Root to Señor Godoy.

Serial No. 243.

DEPARTMENT OF STATE,
WASHINGTON, *May 12, 1908.*

SIR:

Referring to the Department's note No. 238, of the 5th instant, I have the honor to inform you that the Department is in receipt of a letter, dated the 6th instant, from the Attorney General, in which he says that he has again called the attention of the United States Attorney at Waco, Texas, to the necessity of suspending all proceedings for the ejectment of Mexican occupants of El Chamizal tract, pending the final settlement of the international boundary question between the United States and Mexico, affecting portions of said tract.

Accept, Sir, the renewed assurance of my high consideration.

ELIHU ROOT.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

CORRESPONDENCE RELATING TO CERTAIN PROCEEDINGS UNDERTAKEN BY THE COTTON ESTATE.

Señor Godoy to Mr. Bacon.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *Septiembre 29 de 1908.*

Nº. 65.

Honorable Señor:

Tengo la honra de informar á usted que, con fecha 9 del actual, el Jefe de la Comisión Mexicana de Límites entre México y los Estados Unidos, refiriéndose á asuntos relacionados con el caso de El Chamizal, dice lo que sigue:

"Envío á usted copia y traducción de una cita judicial servida en estos días por el Juzgado Federal de los Estados Unidos en El Paso, Texas, á los ocupantes bajo título mexicano de la extremidad

Oriental de la zona del Chamizal que queda formando la prolongación hacia el Sur, de lo que en la ciudad de El Paso se llama "Cotton Addition". El objeto de la cita mencionada es que las personas á quienes se les ha presentado, concurran el próximo día 5 de Octubre ante el referido juzgado, á responder á la demanda que han entablado contra ellos los albaceas de las testamentaría Cotton, con el objeto de desposeerlos y arrojarlos de las propiedades envueltas en el juicio y que se describen en la citación bajo los nombres (a), (b), (c) y (d).

"Acompaño á la vez un plano que comprende toda la región de esta frontera en que se hallan ubicadas las poblaciones de El Paso, Texas y Ciudad Juárez, Chihuahua, así como la porción de terrenos reclamados por la sucesión de Cotton. En el mismo plano he dibujado la posición del Río Bravo en 1852 que forma el límite Norte del área del Chamizal en disputa, cubriendo ésta con tinta verde para hacerla resaltar mejor, y he dibujado á la vez los terrenos (a), (b), (c) y (d).

"Debo advertir que esta posición del Río en 1852 es la adoptada oficialmente por la Comisión Mixta de Límites y por los Gobiernos Mexicano y Americano.

"He localizado los terrenos (a), (b), (c) y (d) valiéndome de los datos del instrumento judicial de referencia, y los he hecho resaltar en el plano por medio de hachuras rojas haciendo evidente que, con excepción de la fracción (a), todo el terreno objeto de la demanda está irrefutablemente comprendido dentro de la zona de El Chamizal, y por lo tanto, en virtud de hallarse actualmente sujeto á la nacionalidad de ésta á activas negociaciones diplomáticas de ambos países, queda fuera por completo de la jurisdicción de los tribunales americanos, federales ó locales, no teniendo los demandados obligación ninguna de responder á la cita que se les hace."

Me permito transcribir á usted lo anterior para su conocimiento, remitiéndole adjunta copia de la cita judicial ya mencionada y el plano á que se refiere el Jefe de la Comisión mexicana de Límites, y por instrucciones especiales de mi Gobierno suplico á usted que, si no hay inconveniente para ello, se sirva dictar sus órdenes por la vía telegráfica (pues la vista del juicio tendrá lugar el día 5 de Octubre) ante las autoridades que correspondan, para evitar que los tribunales federales ó locales sigan conociendo de este asunto, y de los demás que se refieren á terrenos que están en litigio internacional.

Me permito advertir á usted que ya anteriormente los tribunales americanos intervinieron en este asunto, pero que la sucesión de Cotton se obligó á esperar la resolución que dieran ambos Gobiernos y por lo tanto es absolutamente indebida la nueva intervención

de los tribunales en este asunto, lo mismo que la acción de la testamentaría de Cotton al intentar de nuevo la posesión que busca. De todo esto se desprende que el Departamento del digno cargo de usted puede intervenir del modo que le suplico, á fin de que los tribunales de este país se abstengan como ya indiqué de seguir conociendo de este asunto.

Me es grato renovar á usted, Honorable Señor, las seguridades de mi alta consideración.

JOSÉ F. GODOY

Anexos:[a]

Copia de la cita y plano citados.

Honorable Señor ROBERT BACON,

Secretario Interino de Estado de los Estados Unidos de América.

Presente.

[Translation.]

No. 65. EMBASSY OF MEXICO TO THE UNITED STATES OF AMERICA.

WASHINGTON, *September 29, 1908.*

Honorable Sir:

I have the honor to inform you that, under date of the 9th instant, the Head of the Mexican and United States Boundary Commission, referring to matters relating to the El Chamizal case, says the following:

"I send you a copy and translation of a judicial summons served within the last few days by the Federal Court of the United States at El Paso, Texas, on the occupants under Mexican title of the eastern extremity of the zone of El Chamizal, which forms the prolongation towards the south of what is called the "Cotton Addition" at the city of El Paso. The object of the said summons is to have the persons on which it was served come before the said Court on October 5 next to answer a complaint filed against them by the Executors of the Cotton estate, for the purpose of dispossessing them and ejecting them from the property involved in the suit and which is described in the summons under numbers a, b, c, and d.

"I enclose at the same time a map comprising the whole region of this frontier, in which are situated the towns of El Paso, Texas, and Juarez City, Chihuahua, as well as the parcel of lands claimed by the Cotton estate. On the same map I have drawn the position of the Rio Grande River in 1852, which forms the northern

[a] [For enclosure see infra, p. 485.—Agent's note.]

boundary of the area of El Chamizal in dispute, I having covered this area with green ink in order to make it stand out plainer, and I have at the same time drawn the lands a, b, c, and d.

"I must observe that this position of the Rio Grande in 1852 is the one adopted officially by the Mixed Boundary Commission and by the Mexican and American Governments.

"I have located the lands a, b, c, and d, taking advantage of the data given in the judicial document in question, and I have brought them out on the map by means of red hachures, showing plainly that, with the exception of the fraction a, all the land referred to in the complaint is unquestionably comprised within the zone of El Chamizal, and therefore by reason of the nationality of the latter being at present the subject of active diplomatic negotiations on the part of both countries, it is entirely outside the jurisdiction of the American courts, federal or local, the defendants being under no obligation to answer the summons served upon them."

I take the liberty of copying the foregoing to you for your information, and enclose to you a copy of the aforementioned judicial summons together with the map referred to by the head of the Mexican Boundary Commission, and by special instructions from my government I would request, if there be no objection, that you kindly telegraph orders (since the trial is to take place on October 5) to the proper authorities, in order to prevent the federal or local courts from continuing to take cognizance of this case, and of other cases relating to lands, which are the subject of international controversy.

I take the liberty of calling your attention to the fact that the American courts already had this case in hand, but that the Cotton estate was obliged to await the decision rendered by both governments, for which reason this fresh intervention on the part of the courts in this case is absolutely wrong, as is also the action of the Cotton estate in attempting anew to gain the possession which it seeks. From all this it will be gathered that the Department under your worthy charge can intervene in the manner which I request, in order to prevent the courts of this country from continuing to consider this case, as I stated above.

I take pleasure in renewing to you, etc.

JOSÉ F. GODOY.

Enclosures:

Copy of summons and map[a] mentioned.

Honorable Mr. ROBERT BACON,

Acting Secretary of State of the United States of America.

Present.

---

[a] [Map omitted.—Agent's note.]

[Inclosure 1.]

THE UNITED STATES OF AMERICA.

WESTERN DISTRICT OF TEXAS, AT EL PASO.

The President of the United States,
To the Marshal of the Western District of Texas.
Greeting.

You are hereby commanded to summon S. Engelking, José Chávez, Ricardo Anaya, Marcario Durán, Cruz Durán, Juan Durán José Delgado, Rómulo López, Refugio Martínez, Aureliana Díaz, Dominga Ortiz, Concepción Fernandez, Fermín Navarrete, Eligio Palma, Aniceto Maldonado, Hilario Borunda, Jesús Valencia, Trinidad Franco, Camilo Herrera, Valentín Ortegon, Ramiro Raigosa, Manuel Márques, Cesáreo Salinas, Roque Borunda, Félix Rubalcava, Francisco Casas, José Saldaña, Javier Gonzalez, Prisciliano Castillo, Luis Carbajal, Ignacio Chávez, Antonio Gómez, Anastacio Zambrano, Dolores Villanueva, Ernesto García, Juan D. Calderon, Isabel Olivas, Felipe Guerra, Julián Maldonado, María García, Máximo Girón, Adolfo Martínez, Francisco Ganzalez, Sóstenes Gonzalez, Gabriel Torres, Lorenzo Gómez, Gaspar Cué, Isidro Holguín, Encarnación Chávez, Guadalupe Granado, Martín Domínguez, Félix Hernández, Jesús Quintana, José Archuleta, Abraham Madrid, Román Carbajal, Lorenzo Cobos, Adrian Holguín, Jesús García, Pedro Gutiérrez, Prisciliano Madrid, Jorge (George) Delgado, Jesús Rueda, Wm. Lucas, Martín Ortiz, Francisca de la Vega, Jesús Flores, Guadalupe Nevarez, Máximo Mendívil, Luis Jordán, Candelaria V. de Córdova, Ramiro Cano, Raimundo Cano, Prisciliano Caballero, Bernabé Hernandez, Leonardo Zúñiga, José Pérez, Espiridión Alvarado, Urbano Pérez, Jesús Morales, Juan Bustillos, Manuel Meza, Aniceto Melendez, Prudencio Romero, Césareo Candelario, Dolores Valdez, Candelario Griego, Ramón Menvrilla, José García, Jorge Carpio, Narciso Guevara, Martín Medina, Faustino García, José Martínez, Cipriano Armendariz, Benito Guerra, Pete Powers, Carmen Morales, Severiano Andrade y Morales, Domingo Morales, Profirio Luna, Jesús Rocha, Juan Adame, Amado Maldonado, Florencio López, Eleno Rodríguez, Francisco Gutierrez, Serapio Barrera, Valentín Martínez, Inés Lechuga, Santos Ruiz, Venancio Iglesias, José Maria Hinojosa, Octaviano Medrano, José Olivas, Jesús Maria Zambrano, Severo Griego, Wenceslao Membrila and Victor Blot, resident citizens of the County of El Paso, in the Western District of Texas, if to be

found therein, to be and appear before the Honorable Circuit Court of the United States, at a Court to be holden in and for said District, at El Paso, Texas, on the first Monday, being the 5th day of October A. D. 1908, and the first day of the next regular term of said Court in course, to answer a petition and complaint exhibited and filed in said Court on the 29th day of August, A. D. 1908, in a suit numbered on the docket of said Court No. 479, wherein William C. Cotton and Walter B. Grant, Independent Executors, are plaintiffs, and S. Engelking, José Chávez, Ricardo Anaya, Marcario Durán, Cruz Durán, Juan Durán, José Delgado, Rómulo López, Refulgio Martinez, Aureliano Diaz, Domingo Ortiz, Concepción Hernández, Fermín Navarrete, Eligio Palma, Aniceto Maldonado, Hilario Borunda, Jesús Valencia, Trinidad Franco, Camilo Herrera, Valentín Ortegon, Ramiro Raigosa, Manuel Marquez, Cesário Salinas, Roque Borunda, Félix Rubalcava, Francisco Casas, José Saldaña, Javier Gonzalez, Prisciliano Castillo, Luis Carbajal, Ignacio Chávez, Antonio Gómez, Anastacio Zambrano, Dolores Villanueva, Ernesto García, Juan D. Calderón, Isabel Olivas, Felipe Guerra, Julián Maldonado, María García, Máximo Girón, Adolfo Martinez, Francisco Gonzalez, Sóstenes Gonzalez, Gabriel Torres, Lorenzo Gómez, Gaspar Cué, Isidro Holguín, Encarnación Chávez, Guadalupe Granado, Martín Dominguez, Félix Hernandez, Jesús Quintana, José Archuleta, Abraham Madrid, Román Carbajal, Lorenzo Cobos, Adrian Holguín, Jesús García, Pedro Gutierrez, Prisciliano Madrid, Jorge (George) Delgado, Jesús Rueda, Wm. Lucas, Martin Ortiz, Francisca de la Vega, Jesús Flores, Guadalupe Nevarez, Máximo Mendívil, Luis Jordán, Candelaria V. de Córdova, Ramiro Cano, Raimundo, Cano, Prisciliano Caballero, Bernabé Hernandez, Leonardo Zúñiga, José Pérez, Espiridión Alvarado, Urbano Pérez, Jesús Morales, Juan Bustillos, Manuel Meza, Aniceto Melendez, Prudencio Romero, Cesáreo Candelario, Dolores Valdés, Candelario Griego, Ramón Membrila, José Garcia, Jorge Carpio, Narciso Guevara, Martín Medina, Faustino Garcia, José Martinez, Cipriano Armendariz, Benito Guerra, Pete Powers, Cármen Morales, Severiano Andrade y Morales, Domingo Morales, Porfirio Luna, Jesús Rocha, Juan Adame, Amado Maldonado, Florencio López, Eleno Rodriguez, Francisco Gutierrez, Serapio Barrera, Valentín Martínez, Inés Lechuga, Santos Ruiz, Venancio Iglesias, José Maria Hinojosa, Octaviano Medrano, José Olivas, Jesús Maria Zambrano, Severo Griego, Wenceslao Membrila, and Victor Blot, are defendants.

The nature of the plaintiffs' demand is as follows, to wit:

The plaintiffs allege in their petition that they are independent executors of the last will and testament of Frank B. Cotton, deceased, and as such were lawfully seized and possessed of certain tracts of land hereinafter described, situated in El Paso County, Texas, and that the defendants above named unlawfully entered into and dispossessed plaintiffs of said premises and withhold from them the possession thereof, to their damage in the sum of $200,000, and that the reasonable annual rental value of said land and premises is $20,000; that by reason of said unlawful taking and holding possession of said premises the defendants, and each of them, became liable and promised to pay plaintiffs the reasonable rental value of said premises; that in addition to holding and claiming said land and premises in fee simple, plaintiffs allege the estate of Fran. B. Cotton, deceased, has acquired good and sufficient title to said land and premises by the statutes of limitation of three, five and ten years.

The plaintiffs also allege that the defendants, and each of them, are naked trespassers upon said land, and pray for judgment against said defendants, and each of them, for the title to and the possession and restitution of all of the south end of the N. W. Burdett surveys No. 1 and No. 2, lying and being situated in the City of El Paso, County of El Paso, and State of Texas bounded and described as follows, to wit:

(a) Beginning at the original southwest corner of the said N. W. Burdett survey No. 2, thence North 710 feet to the right of way of the Texas & Pacific Railway Company; thence along said right of way north 61 degrees 30 minutes east 1196 feet to a point; thence with the right of way of the said Texas & Pacific Railway Company north 28 degrees 30 minutes west 200 feet to a point; thence along said right of way of the said railway company north 61 degrees 30 minutes east 1030 feet to a stake; thence south 44 degrees 14 minutes west 2689 feet and 6 inches to the place of beginning.

(b) Beginning at an iron pipe and running north 44 degrees 14 minutes east 2689 feet and 6 inches to a stake; thence south 5094 feet and 8 inches to a stake set on the bank of the Rio Grande river; thence south 75 degrees 20 minutes west 1912 feet to a stake set on a bank of the Rio Grande river; thence north 3643 feet and 6 inches to the place of beginning.

(c) Another tract of land adjoining the above described tract, which is described as follows: Beginning at a stake and mound standing on the east line of said N. W. Burdett survey No. 2 and on the south bank of the Rio Grande river, said stake and mound being 3060 varas due south from the northeast corner of said N. W. Burdett survey No. 2; thence with the east line of said Burdett survey No. 2 south 1418½ varas to a stake standing on the north bank of said Rio Grande river; thence down and along said Rio Grande with its meanders, to the place of beginning.

(d) Another tract of land, adjoining the land above described in paragraph "c", which is bound and described as follows, to wit: Beginning at a point 1866 feet and 6 inches east of the original southwest corner of the said N. W. Burdett survey No. 2; thence south 88 degrees 30 minutes east 1427 feet and 8 inches to a stake; thence south 68 degrees east 166 feet and 6 inches to a stake; thence south 49 degrees 45 minutes east 277 feet and 7 inches to a stake; thence south 25 degrees 30 minutes east 833 feet and 3 inches to a stake; thence south 15 degrees 20 minutes east 444 feet and 3 inches to a stake; thence south 1 degree east 348 feet to a stake; thence north 49 degrees 10 minutes east 673 feet and 1 inch to a stake; thence north 26 degrees 50 minutes west 1400 feet to a stake; thence north 38 degrees 55 minutes west 1310 feet to a stake; thence north 59 degrees 22 minutes west 886 feet to a stake; thence north 77 degrees 34 minutes west 528 feet to a stake; thence south 1376 feet to the place of beginning.

That the said tracts of land are bounded south by the Rio Grande River, east by said river or the banks of the old channel of said river and the N. W. Burdett survey No. 1, commonly known as Bassett addition to the city of El Paso; and on the west by what is known as Magoffin's addition to the City of El Paso; and on the north by what is known as N. W. Burdett surveys No. 1 and No. 2.

And you will deliver to the Defendants above named, each in person, a true copy of this writ.

Herein fail not, but have you then and there before said Court this writ, with your action thereon, showing how you have executed the same.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court hereto affixed, at El Paso, Texas, this 3rd day of September, A. D. 1908, and the 132nd year of our Independence.

Issued the same day.

D. H. HART, *Clerk of said Court,*
By GEO. B. OLIVER.
Deputy.

[SEAL.]
[THE SEAL OF THE UNITED STATES
CIRCUIT COURT.
WESTERN DISTRICT OF TEXAS,
EL PASO.]

A true copy of the original,
I hereby certity,

D. H. HART, *Clerk.*
By GEO. B. OLIVER,
Deputy.

Mr. Root to Señor Godoy.

DEPARTMENT OF STATE,
Serial No. 351. WASHINGTON, *October 1, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 65, of the 29th ultimo, enclosing a copy and translation of a judicial summons served within the last few days by the United States Federal Court at El Paso, Texas, on the occupants who, as your note states, make claim under Mexican title to the eastern extremity of the zone of El Chamizal, which forms the prolongation towards the south of what is called "Cotton Addition" at the ctiy of El Paso, the object of the said summons being to have the persons summoned appear before the said Court on the 5th instant, to answer a complaint filed against them by the Executor of the Cotton Estate, for the purpose of dispossessing and ejecting them from the property involved in the suit.

You request that orders be telegraphed to the proper authorities, in order to prevent the Federal or local courts from continuing to take cognizance of this case, and of other cases relating to lands which are the subject of international controversy.

In reply I have the honor to say that this Department has requested the Department of Justice to intervene and request the court to suspend all further proceedings in the suit in question, so far as regards lands south of the channel of the Rio Grande in 1852, as shown upon the official map accepted by the two Governments and designated by the tracts marked B, C, and D upon the map enclosed in your note.

Accept, Sir, the renewed assurance of my high consideration.

(signed) ELIHU ROOT.

Señor Don José F. GODOY,
Chargé d'Affairés ad interim of Mexico.

Mr. Root to Señor Godoy.

DEPARTMENT OF STATE,
Serial No. 355. WASHINGTON, *October 7, 1908.*

SIR:

Referring to the Department's note No. 351, of the 1st instant, I have the honor to inform you that the Department is in receipt of a letter, dated the 1st instant from the Acting Attorney General, in which he says:—

"Answering your letter of this date, with its enclosures, relative to certain ejectment proceedings which appear to have been instituted by William C. Cotton and Walter B. Grant, executors, against S. Engelking and others, in the U. S. Circuit Court for the Western District of Texas, defendants claiming, under Mexican title, a portion of the tract of El Chamizal near the city of El Paso, I have the honor to advise you that I have this day sent telegraphic instructions to the United States Attorney for that District in accordance with your request, and will advise you further upon receipt of his report."

Accept, Sir, the renewed assurance of my high consideration.

ELIHU ROOT.

Señor José F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *Octubre 22 de 1908.*

N°. 76

Excelentísimo Señor:

Habiendo puesto en conocimiento de la Secretaría de Relaciones Exteriores de mi Gobierno, el contenido de la nota de usted número 355, en que ratifica oficialmente las instrucciones que se dieron por telégrafo al Procurador correspondiente de los Estados Unidos, para que suspendiera los procedimientos de lanzamiento iniciados por la testamentaría Cotton contra algunos ocupantes de una porción de los terrenos del Chamizal, me as grato manifestar á usted el agradecimiento de mi Gobierno por lo que se ha servido hacer sobre el particular.

Igualmente le manifiesto que la Secretaría de Relaciones Exteriores de mi Gobierno ha tenido noticia de que la vista de la demanda á que se refiere este asunto, que debió haber tenido lugar el 5 del actual, se aplazó, á petición de varios de los mexicanos demandados hasta el próximo período de sesiones de la Corte Federal, que comenzará en Abril del próximo año de 1909; por lo tanto de nuevo suplico á usted, por instrucciones de mi Gobierno, se sirva reiterar la recomendación que antes hizo, en previsión de que algunos de los interesados pudieren gestionar la prosecución del procedimiento, y para que en el mes de Abril próximo, la Corte, de una manera absoluta, suspenda el juicio, por estar los terrenos de la zona oriental del Chamizal, motivo de la demanda de Cotton, en litigio internacional.

Con este motivo me es grato, Excelentísimo Señor, reiterar á usted las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo Señor
ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

No. 76. WASHINGTON, *October 22, 1908.*

Most Excellent Sir:

Having acquainted the Department of Foreign Relations of my Government with the contents of your note No. 355 by which you officially confirm the instructions sent by telegraph to the United States Attorney for the suspension of the ejectment proceedings instituted by the Cotton Estate against certain occupants of a portion of the Chamizal Tract, I have pleasure in expressing to you the thanks of my Government for the action you were pleased to take in the matter.

I also have to advise you that the Department of Foreign Relations of my Government has received intelligence to the effect that the hearing of the cause herein referred to, which was to take place on the 5th instant was, at the request of several of the Mexican defendants, postponed to the next term of sessions of the United States Court which will begin in April of the coming year 1909; I therefore beg you again, by direction of my Government to be pleased to renew the recommendation previously made by you in anticipation of any action that might be taken by some of the parties in interest for the prosecution of the case and to the end that the Court will absolutely suspend the case on the ground that the lands of the Eastern zone of Chamizal, on which the Cotton action bears, are the subject of international controversy.

I have pleasure, Most Excellent Sir, in renewing to you, on this occasion, the assurances of my highest and most distinguished consideration.

JOSÉ F. GODOY.

His Excellency,
Mr. ELIHU ROOT,
Secretary of the United States of America.
Present.

Mr. Adee to Señor Godoy.

Serial No. 370. DEPARTMENT OF STATE,
WASHINGTON, *November 2, 1908.*

SIR:

I have the honor to acknowledge the receipt of your note No. 76, of the 22d ultimo, in which you state that some of the defendants in the suit brought by the Cotton Estate against certain occupants of a portion of El Chamizal tract have had the cases against them set for the next term of court, which begins in April, 1909; and you request the Department to take steps to have these suits suspended absolutely, on the ground that the lands of the eastern zone of El Chamizal are the subject of international controversy.

In reply I have the honor to inform you that the matter is receiving proper direction.

Accept, Sir, the renewed assurance of my high consideration.

ALVEY A. ADEE
Acting Secretary.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

Mr. Bacon to Señor Godoy.

Serial No. 374. DEPARTMENT OF STATE,
WASHINGTON, *November 10, 1908.*

SIR:

Referring to previous correspondence, especially to your note of the 22d ultimo and the Department's reply of the 2d instant, concerning a suit brought by the Cotton Estate against certain occupants of El Chamizal tract, I have the honor to enclose herewith, for your information, a copy of a letter from the Acting Attorney General, in which he states that the United States Attorney for the western district of Texas has been instructed to report his action in the matter, taken under the instructions of the Department of Justice of October 1, 1908, and to report concerning the present status of the suit referred to.

Accept, Sir, the renewed assurance of my high consideration.

ROBERT BACON,
Acting Secretary.

Enclosure:

From Department of Justice, November 3, 1908.

Señor Don JOSÉ F. GODOY,
Chargé d'Affaires ad interim of Mexico.

[Inclosure.]

Mr. Hoyt to Mr. Root.

DEPARTMENT OF JUSTICE,
WASHINGTON.

103530—2.

November 3, 1908.

The SECRETARY OF STATE.

Sir:

Acknowledging the receipt of your letter of November 2, with its enclosure, in regard to the ejectment proceedings instituted by the Cotton Estate against certain occupants of the tract known as El Chamizal near El Paso, Texas, I have the honor to say that, in accordance with your request, I have to-day called upon the United States Attorney for the western district of Texas to report to me promptly his action taken under the Department's instructions of October 1st, and the present status of the suit referred to. Upon receipt of his reply, I shall be pleased to communicate its contents to you.

Very respectfully,

H. M. HOYT,
Acting-Attorney General.

Mr. Root to Señor Godoy.

Serial No. 377.

DEPARTMENT OF STATE,
WASHINGTON, *November 17, 1908.*

SIR:

Referring to previous correspondence with respect to the proceedings recently instituted by the executors of the Cotton Estate against S. Engelking and others, occupants of a portion of El Chamizal tract, with particular reference to the Embassy's note No. 65, of September 29 last, I have now the honor to enclose for your information a copy of the reply made by the Department of Justice to this Department's letter of the 1st ultimo, wherein the Acting Attorney General gives the substance of a report in the matter, dated November 7 last, made by the United States Attorney for the Western District of Texas.

Accept, Sir, the renewed assurances of my high consideration.

ELIHU ROOT

Enclosure:

From Department of Justice,
November 10, 1908.

Señor Don José F. GODOY,
Chargé d'Affaires ad interim of Mexico.

[Inclosure.]

Mr. Fowler to Mr. Root.

103530—7. DEPARTMENT OF JUSTICE,
WASHINGTON,
November 10, 1908.

The SECRETARY OF STATE.

SIR:

I have the honor to advise you that the Department is in receipt of a report dated November 7 from the United States Attorney for the Western District of Texas upon the subject of the proceedings recently instituted by the executors of the Cotton Estate against S. Engelking and others, occupants of a portion of El Chamizal tract. Mr. Boynton states that the steps so far taken in said proceedings consist of the filing of a petition, and citing of defendants therein named, in the United States Circuit Court at El Paso in the form of action provided for by the laws of Texas, known as a suit of trespass to try title and recover possession of land, the petition having been filed merely for the purpose of protecting plaintiffs against defendants acquiring claim by limitation to any portion of said land, and with no expectation of pressing the suit to final action while the land involved remains the subject of international controversy and under the jurisdiction of the International Boundary Commission. No steps whatever have been taken in connection with the filing of the suit to eject any of the defendants.

Mr. Boynton further states that when the case was reached in the Circuit Court on October 6th, last, these matters were called to the attention of the court, and the case continued for the term.

I beg to return herewith the map which accompanied the copy of a note from the Mexican Chargé d'Affaires transmitted with your letter of October 1st upon this subject.

Very respectfully,

J. A. FOWLER,
Acting Attorney General.

Señor Godoy to Mr. Root.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *18 de diciembre de 1908.*

Nº 125.

Excelentísimo señor:

Con referencia á la nota de usted número 377, de 17 del mes próximo pasado, con que se sirvió usted remitirme copia de la respuesta dada por el Departamento de Justicia acerca de los procedimientos iniciados recientemente por los albaceas de la testamentaría Cotton contra S. Engelking y otros, ocupantes de parte de los terrenos de El Chamizal, me es grato manifestar á usted, por órdenes especiales que he recibido, la satisfacción con que el Gobierno de México ha recibido dicha respuesta del Departamento de Justicia, en relación con el caso de que se trata.

Me es grato renovar á usted, Excelentísimo señor, las seguridades de mi más alta y distinguida consideración.

JOSÉ F. GODOY

Excelentísimo señor
ELIHU ROOT,
Secretario de Estado de los Estados Unidos de América.
Presente.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,
WASHINGTON, *December 18, 1908.*

No. 125.

Most Excellent Sir:

With reference to your note No. 377 of the 17th ultimo, with which you were pleased to send me a copy of the answer made by the Department of Justice in regard to the proceedings recently instituted by the administrator of the Cotton estate against S. Engelking *et al.*, occupants of part of the Chamizal lands, it affords me pleasure to express to you, by special order received by me, the satisfaction with which the Government of Mexico received the said answer of the Department of Justice touching the case under consideration.

I take pleasure in renewing to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

José F. Godoy.

Most Excellent
Mr. Elihu Root
Secretary of State of the United States of America
Present.

CORRESPONDENCE RELATING TO THE EVICTION OF MRS. VALENZUELA.

Señor de la Barra to Mr. Knox.

Embajada de México
en los
Estados Unidos de América

Washington, *15 de abril de 1909.*

N°. 217.

Excelentísimo señor:

En telegrama recibido anoche, el señor Secretario de Relaciones Exteriores de México me comunica que el Juez Watson, del Distrito número 1 de El Paso, Texas, dictó, con fecha 10 del mes en curso, un fallo en el juicio número 750 seguido por Look contra la señora Francisca de Valenzuela sobre propiedad de la manzana 26, de la adición de Campbell, que está notoriamente dentro del Chamizal. A pesar de tal circunstancia, el Sheriff lanzó de su propiedad á la señora Valenzuela arrojando á la calle sus muebles.

La señora Valenzuela protestó respetuosa, pero enérgicamente, contra ese acto enteramente injustificado.

Mi Gobierno, que confía plenamente en el espíritu de justicia del Gobierno americano, en la cordialidad de las relaciones de amistad que unen á uno y otro y en la claridad y precisión de los hechos citados, espera que Vuestra Excelencia se servirá, con la premura del caso, dictar sus órdenes para la anulación del fallo del Juez Watson reinstalando á la señora Valenzuela en su propiedad y reconociendo en principio la reparación de los daños causados.

No es necesario fundar lo anterior en consideraciones más amplias; la simple exposición de los hechos hará ver á Vuestra Excelencia como distinguido jurisconsulto que es, la justicia que le asiste á mi Gobierno en lo solicitado.

El Chamizal, cuya propiedad á favor de México sostiene desde hace tiempo mi gobierno con acopio de buenas razones, debe

aparecer á los ojos de Vuestra Excelencia cuando menos como sujeto á un litigio internacional, que crea una situación jurídica especial violada por el fallo del Juez Watson y por los actos ejecutados por el Sheriff.

El Gobierno de México, comprendiendo la importancia que reviste, para evitar conflictos como el actual, la determinación de una línea segura de límites, se ha dirigido al de Vuestra Excelencia proponiéndole primero un arbitraje en el caso especial del Chamizal, y después un tratado definitivo de límites á fin de fijar definitivamente la línea que ha de dividir á México y á los Estados Unidos. Acerca de éste último punto tuve la honra de dirigir á Vuestra Excelencia días ha una nueva exposición suplicándole tomar en cuenta los deseos del Gobierno mexicano y su propósito de aclarar tales cosas.

Dado el espíritu de justicia que anima al Gobierno americano, y dado, sobre todo, que sus relaciones internacionales se encuentren en mano de un jurisconsulto tan hábil y un estadista tan competente como Vuestra Excelencia no dudo que, al mismo tiempo que dé los pasos para evitar conflictos como el que dejo relatado, haga cuanto esté en su mano por terminar un tratado de amistad y límites que será en extremo ventajoso para las dos partes y traerá á sus respectivos intereses grandes y positivas utilidades.

Aprovecho esta oportunidad, Excelentísimo señor, para reiterar á Vuecencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA

Excelentísimo señor
PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

WASHINGTON, *April 15, 1909.*

No. 217.

Most Excellent Sir:

By a telegram received last evening, the Secretary of Foreign Relations of Mexico informs me that Judge Watson, of District

No. 1 of El Paso, Texas, issued on the 10th instant, a decree in case No. 750, of Look *vs* Mrs. Francisca de Valenzuela, touching a piece of property in block 26 of the Campbell addition, which is publicly known to be within the Chamizal. In spite of this the Sheriff ejected Mrs. Valenzuela and threw her furniture on the street.

Mrs. Valenzuela respectfully but energetically protested against this entirely unwarranted act.

My Government, reposing full confidence in the American Government's spirit of justice, in the cordiality of the friendly relations which unite the two Governments and in the clearness and accuracy of the foregoing facts hopes that Your Excellency will be pleased to direct, with appropriate promptness, that the decree of Judge Watson's be rescinded, her property returned to Mrs. Valenzuela and the principle of reparation for the injury done recognized.

It is unnecessary to support the foregoing with further considerations: the mere statement of the facts will show to so distinguished a jurist as Your Excellency the justice of my Government's request.

The Chamizal, to which my Government has been for a long time upholding the title of Mexico on an abundance of substantial grounds, must at least be looked upon by Your Excellency as the subject of an international dispute, created by a peculiar judicial condition that has been violated by Judge Watson's decree and the Sheriff's acts.

The Government of Mexico, realizing the importance of avoiding conflicts like the present one by defining a reliable boundary line, has addressed Your Excellency's Government and proposed, first, arbitration in the specific case of the Chamizal, next, a final boundary treaty for the definitive delineation of the dividing line between Mexico and the United States. I had the honor to send to Your Excellency, days ago, an additional statement on this point and to beg you to take into consideration the Mexican Government's wishes and its purpose to clear these matters.

In view of the spirit of justice which animates the American Government and, above all, of the fact that its foreign relations are in the hands of so talented a jurist, so capable a statesman as Your Excellency, I have no doubt that while taking steps to avoid conflicts such as that hereinbefore described, you will do all that

lies in your power to bring to conclusion a treaty of Amity and Boundary which will be extremely advantageous to both parties and prove of great and substantial value to their respective interests.

I avail myself of this opportunity, Most Excellent Sir, to renew to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor de la Barra.

DEPARTMENT OF STATE.
WASHINGTON, *April 16, 1909.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 217, of the 15th instant, in which you call attention to the action of the local authorities at El Paso, Texas, in ejecting Mrs. Francisca Valenzuela, a Mexican citizen, from land in the Chamizal district, and request that the decree of ejectment be rescinded, that Mrs. Valenzuela's property be restored to her, and that the principle of reparation for the injury done be recognized.

In reply I have the honor to say that this matter was brought to the attention of the Department on April 13th by General Mills, the American Commissioner of the International Boundary Commission, who had received a telegram in regard to the matter from his Mexican colleague; and that the Department immediately requested the Department of Justice to take suitable action in the premises. The Department is now in receipt of a letter from the Department of Justice, dated April 15, a copy of which is enclosed herewith, from which it will appear that all appropriate steps have been taken by the Department of Justice.

The Department is giving careful consideration to the proposals of the Mexican Government in regard to the settlement of the entire Chamizal matter, and hopes to make a response to the Embassy's notes on this subject in a short time.

Accept, Excellency, the renewed assurance of my highest consideration.

HUNTINGTON WILSON,
Acting Secretary.

His Excellency,
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Enclosures:
From Department of Justice, April 15, 1909, with enclosure.

[Inclosure.]

Mr. Wickersham to Mr. Knox.

DEPARTMENT OF JUSTICE,
WASHINGTON, *April 15, 1909.*

SECRETARY OF STATE.

SIR:

I have the honor to acknowledge the receipt of your letter dated the 13th instant, with its enclosures, relative to the alleged ejectment of Francisca de Valenzuela, a Mexican citizen, residing on the tract known as El Chamizal near El Paso, Texas, the title to which is the subject of international controversy between the United States and Mexico.

In reply I beg to say that immediately upon receiving your communication yesterday I sent appropriate telegraphic instructions to the United States Attorney for the Western District of Texas, and I have today directed him more fully by letter, a copy of which I enclose for your information.

Very respectfully,

GEO. W. WICKERSHAM.
Attorney General.

[Sub-inclosure.]

Mr. Wickersham to Mr. Boynton.

DEPARTMENT OF JUSTICE,
WASHINGTON, *April 15, 1909.*

103530.

CHARLES A. BOYNTON, Esq.,
U. S. Attorney,
Waco, Texas.

SIR:

Referring to my telegram of yesterday, I am advised through the Department of State that, as a result of ejectment proceedings brought against one Francisca de Valenzuela, a Mexican citizen —

residing in the district known as El Chamizal, Justice of the Peace Watson of District No. 1 of El Paso rendered a decision of dispossession against the defendant on April 10, and on the 13th instant she was forcibly ejected by the sheriff.

Recalling previous correspondence with you in relation to similar instances of attempts on the part of both State and Federal courts in Texas to assume jurisdiction over this tract of land the title to which is still the subject of dispute between the United States and Mexico and is *sub judice* before the International Boundary Commission, you are hereby instructed to investigate the matter of the alleged ejectment of Senora Valenzuela, and if the facts warrant, to take the necessary steps to have the decision referred to set aside if possible and the evicted person restored, in order that the *status quo* may be maintained pending the determination of the question at issue before the proper international tribunal.

You are also directed to report to me promptly your action taken under this instruction.

I enclose herewith for your further information copies of a letter from Brigadier General Anson Mills, the American Commissioner on the International Boundary Commission, and of a telegram received by General Mills from the Mexican Commissioner, relating to the same subject.

Respectfully, GEO. W. WICKERSHAM,
Attorney General.

Mr. Wilson to Señor Álvares.

DEPARTMENT OF STATE,
WASHINGTON, *April 29, 1909.*

MY DEAR MR. CHARGÉ:

Referring to our personal conversation of yesterday regarding Mrs. Valenzuela, I take pleasure in informing you that the matter has been taken up with the Solicitor General, who informs me that the appropriate District Attorney will be directed to report by telegraph today.

As soon as we have any further information upon the subject I will be glad to advise you.

I am, my dear Mr. Salado,

Very sincerely yours,

HUNTINGTON WILSON.

Señor Don V. SALADO-ÁLVARES,
Embassy of Mexico.

Señor Álvares to Mr. Wilson.

EMBAJADA DE MEXICO
EN LOS
ESTADOS UNIDOS DE AMERICA.

WASHINGTON, *May 1st, 1909.*

MY DEAR MR. WILSON:

I must thank you for the interest you have taken in the matter relative to Mrs. Valenzuela's case, and would appreciate it greatly if you let me know, at your convenience, the Solicitor General's answer in regard thereto.

I remain, dear Mr. Wilson,

Sincerely yours,

V. SALADO-ÁLVARES.

Hon. ASSISTANT SECRETARY OF STATE,
Department of State, Washington.

Mr. Wilson to Señor Álvares.

Serial No. 38.

DEPARTMENT OF STATE,
WASHINGTON, *May 6, 1909.*

SIR:

Referring to previous correspondence, and especially to my personal note of the 29th ultimo, relative to the complaints made by the Mexican Government against the ejectment of Mrs. Francisca de Valenzuela from property located within the Chamizal tract, I have the honor to enclose herewith, for your information, a copy of a letter from the Acting Attorney General, in which he says that it appears from the report of the United States Attorney for the Western District of Texas, a copy of which is also enclosed, that the only question involved in the case is as to the right of possession, the proceedings being in the nature of an action by a landlord to dispossess a tenant, brought under a Texas statute relating to forcible entry and detainer, and that the matter, therefore, is purely one between landlord and tenant, and in no way affects the title to the land. The Acting Attorney General adds that under these circumstances it does not appear that the Department of Justice can properly take any further action in the premises.

In this connection I beg to refer you to the Department's No. 56, June 24, 1907, to Ambassador Creel, in answer to his note

No. 79, of the 17th of that month, which dealt with a similar incident, in which the question of title to the Chamizal tract was not affected.

Accept, Sir, the renewed assurance of my high consideration,

HUNTINGTON WILSON,
Acting Secretary.

Señor Don V. SALADO-ÁLVAREZ,
Chargé d'Affaires ad interim of Mexico.

Enclosures:

From Department of Justice, April 30, 1909, with enclosure.

Inclosure:

Mr. Ellis to Mr. Knox.

DEPARTMENT OF JUSTICE,
WASHINGTON, *April 30, 1909.*

103530–11

The SECRETARY OF STATE.

SIR:

I have the honor to transmit herewith, for your information, a copy of a report, dated April 27, which was received today from the United States Attorney for the Western District of Texas, relative to the ejectment proceedings in the case of George Look v. Francisca de Valenzuela at El Paso. It appears from this report that the only question involved in the case is as to the right of possession, the proceeding being in the nature of an action by a landlord to disposess a tenant, brought under a Texas statute relating to forcible entry and detainer, and that the matter, therefore, is purely one between landlord and tenant, and in no way affects the title to the land.

Under these circumstances it does not appear that the Department can properly take any further action in the premises.

The United States Attorney also states that the courts in El Paso understand and recognize that the question of title to the Chamizal tract is pending before the International Boundary Commission, and that no difficulty is experienced in preserving the *status quo* where any proceedings arise which affect that question.

Very respectfully,

WADE H. ELLIS,
Acting Attorney General.

[Sub-inclosure.]

Mr. Boynton to Mr. Wickersham.

DEPARTMENT OF JUSTICE.
OFFICE OF THE UNITED STATES ATTORNEY,
WESTERN DISTRICT OF TEXAS.

WACO, TEXAS, *April 27, 1909.*

The ATTORNEY GENERAL,
Washington, D. C.

SIR:

Responding to your telegram of the 14th, and letter of 15th, initials "S. G. 103530," relating to ejectment proceedings in cause No. 750, styled George Look v. Francisca de Valenzuela, before Justice of the Peace Watson of District No. 1, at El Paso, wherein said defendant was ejected from premises situated in Block 26 of Campbell's Addition on the El Chamizal tract in El Paso, I beg to state that said telegram was duly received by me at El Paso, and investigations were at once commenced to ascertain the facts in this case. It was found that the proceeding in question was in the nature of an action brought under the Statute entitled "Forcible Entry and Detainer" of this State, by a landlord to dispossess the tenant, and the only question at issue in such case is the question of possession, and in no manner affects the title to the land. Before the receipt of said telegram the defendant had been ejected from the premises in question, and the Court was unwilling to entertain an injunction or any proceeding that would disturb the present occupants of the premises, holding that he had no jurisdiction over same. In one or two instances such ejectments, in the nature of Forcible Entry and Detainer proceedings in the Justice Court, have taken place, but nothing that would affect the title to the land, and all of the Courts in El Paso recognize that the title to said land is still a subject of dispute between the United States and Mexico, and is *sub judice* before the International Boundary Commission.

Where we are notified beforehand of any contemplated proceeding relating to said El Chamizal tract, we have always been able to induce the various Courts to let matters remain in *statu quo* awaiting determination of the questions at issue, as to title, before the proper international tribunal. These suits in the Justice Court are merely matters between landlord and tenant as to the right of possession.

Very respectfully,

CHARLES A. BOYNTON,
United States Attorney.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

No. 321. WASHINGTON, *Julio 30 de 1909.*

Excelentísimo Señor:

Con referencia á la nota de ese Departamento, número 38, de 6 de Mayo último, relativa al caso de la reclamación de la Señora Valenzuela, mi Gobierno me encarga manifieste á Vuestra Excelencia, tal como tengo la honra de hacerlo, que muy en breve recibirá los documentos que justifican que el lote de que fué despojada la citada Señora Valenzuela, en El Chamizal, está amparado por un título mexicano, y que tan pronto como tenga en su poder esos documentos, se seguirá tratando dicha reclamación con el Gobierno de los Estados Unidos de América.

Lo que tengo la honra de poner en conocimiento de Vuestra Excelencia, renovándole á la vez las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,

No. 321. WASHINGTON, *July 30, 1909.*

Most Excellent Sir:

With reference to your Department's note No. 38, of May 6, last, relative to the case of Mrs. Valenzuela's complaint, my Government instructs me to inform Your Excellency, and I have hereby the honor so to do, that it will very shortly receive the documents which show that the lot of which Mrs. Valenzuela was despoiled in El Chamizal is under the protection of a Mexican title and that, as soon as it has the said documents in its possession, it will continue with the Government of the United States the discussion of the said complaint.

I have the honor to bring the foregoing to Your Excellency's knowledge and to renew to you, at the same time, the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Adee to Señor de la Barra.

No. 86. DEPARTMENT OF STATE,
WASHINGTON, *August 10, 1909.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 321, of the 30th ultimo, informing the Department that your Government will very shortly receive the documents which show that the lot of which Mrs. Valenzuela was despoiled in El Chamizal is under the protection of a Mexican title, and that as soon as the said documents are in its possession, your Government will continue with the Government of the United States the discussion of Mrs. Valenzuela's complaint.

Accept, Excellency, the renewed assurance of my highest consideration.

ALVEY A. ADEE,
Acting Secretary of State.

His Excellency
Señor Don FRANCISCO L. DE LA BARRA,
Ambassador of Mexico.

CORRESPONDENCE RELATING TO THE PROPOSED LOCATION OF THE EL PASO GARBAGE AND SEWER DISPOSAL PLANTS ON THE CHAMIZAL TRACT.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

No. 309. WASHINGTON, *Julio 15 de 1909.*

Excelentísimo Señor:

Un hecho reciente, que se reune á los ya numerosos que esta Embajada ha dado á conocer al Departamento de Estado, viene á agravar la situación delicada del asunto de "El Chamizal," en la línea limítrofe de ambos países.

Rompiendo el *statu quo* convenido, el Ayuntamiento de El Paso, Texas, ha decidido en la sesión de 24 de Junio, comprar una extensión de 13 acres al Sur de la adición Cotton, dentro del área del terreno mexicano de "El Chamizal," con el objeto de establecer un sistema de tratamiento para los desechos y las basuras de la ciudad. El terreno de que se trata está comprendido en los que son objeto de la reclamación de México contra la testamentaría Cotton.

Si se llevara adelante la disposición de dicho Ayuntamiento, aumentaria el malestar general y la inseguridad aparente de todos los propietarios mexicanos de "El Chamizal," cuyos derechos están bajo la protección de mi Gobierno.

Seguro estoy, Excelentísimo Señor, de que el Gobierno de los Estados Unidos interesado como el de México, en cumplir el acuerdo relativo al mantenimiento del *statu quo*, seservirá intervenir desde luego para que el Ayuntamiento de El Paso, cese en sus propósitos de adquirir el terreno á que me he referido.

Renuevo á usted, Excelentísimo Señor, las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA

Excelentísimo Señor
PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

No. 309. WASHINGTON, *July 15, 1909.*

Most Excellent Sir:

In addition to the numerous incidents already made known to the Department of State, a recent one has arisen to aggravate the delicate situation of the case of "El Chamizal" on the boundary line of the two countries.

The Municipal Government of El Paso, Texas, breaking the *statu quo* agreed upon, decided in its session of June 24, to purchase a 13 acre tract south of the Cotton addition, within the Mexican land of El Chamizal, for the purpose of establishing a system of treatment of the city's refuse and garbage. The land in question forms part of that which is the object of Mexico's claim against the Cotton estate.

Should the Municipal Government's resolution be carried out, the general uneasiness and apparent insecurity of all the Mexican

owners of "El Chamizal" whose rights are under my Government's protection, would be intensified.

I am sure, Most Excellent Sir, that the Government of the United States equally interested with that of Mexico in fulfilling the agreement relative to the maintenance of the *statu quo*, will be pleased to intervene at once to cause the Municipal Government of El Paso to desist from its purpose to purchase the land hereinabove referred to.

I renew to you, Most Excellent Sir, the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

Most Excellent Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Adee to Señor de la Barra.

No. 77. DEPARTMENT OF STATE,
WASHINGTON, *July 22, 1909.*

Excellency:

I have the honor to acknowledge the receipt of your note No. 309, of the 15th instant, in which you state that the municipal government of El Paso, Texas, decided at its session of June 24th to purchase a thirteen-acre tract south of the Cotton addition, within the so-called "Chamizal tract," now in dispute between the United States and Mexico, for the purpose of establishing a system of treatment of the city's refuse and garbage; and that, should the municipal government's resolution be carried out, the general uneasiness and apparent insecurity of all the Mexican owners of El Chamizal would be intensified.

You therefore request the Department to intervene at once to cause the municipal government of El Paso to desist from its purpose to purchase the land in question.

In reply, I have the honor to inform you that the Department has given your note appropriate direction.

Accept, Excellency, the renewed assurance of my highest consideration.

ALVEY A. ADEE,
Acting Secretary.

His Excellency
Senor Don FRANCISCO LEON DE LA BARRA,
Ambassador of Mexico.

Mr. Wilson to Señor de la Barra.

No. 81. DEPARTMENT OF STATE,
WASHINGTON, *July 30, 1909.*

Excellency:

Referring to the Department's note No. 77, of the 22d instant, acknowledging your No. 309, of the 15th instant, on the subject of the contemplated purchase by the municipal government of El Paso, Texas, of a thirteen-acre tract south of the Cotton addition, within the so-called "Chamizal tract," now in dispute between the United States and Mexico, for the purpose of establishing a system of treatment of the city's refuse and garbage, I have the honor to inform you that the Department is in receipt of a letter, dated the 23rd instant, from the Acting Attorney General, in which he says that the matter complained of in your note is being carefully investigated by the appropriate authorities, and that upon the receipt of a report of the investigation, he will advise the Department further in the matter.

Accept, Excellency, the renewed assurance of my highest consideration.

HUNTINGTON WILSON,
Acting Secretary.

His Excellency
Senor Don FRANCISCO L. DE LA BARRA,
Ambassador of Mexico.

Señor Dávalos to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

Nº. 455. WASHINGTON, *6 de enero de 1910.*

Excelentísimo Señor:

Por instrucciones especiales que acabo de recibir por telégrafo de mi Gobierno, tengo la honra de poner en conocimiento de Vuestra Excelencia que el Ayuntamiento de El Paso, Texas, acaba de adquirir unos terrenos comprendidos en la zona de "El Chamizal," actualmente cercados y explotados por propietarios bajo título mexicano, y que el Alcalde señor Sweeney ha empezado á acumular en dichos terrenos, piedra y material para la construcción de una obra destinada al tratamiento de las basuras de la ciudad, habiendo roto el candado que guardaba la puerta de

entrada del cerco y fijado avisos ordenando el arresto de los propietarios mexicanos que se opongan á su acción.

En vista de lo anterior, mi Gobierno me recomienda que, con el carácter de urgente y con referencia á las notas números 77 y 81 de ese Departamento de Estado, me dirija yo á Vuestra Excelencia suplicándole que, si para ello no hubiere inconveniente, se digne recabar las órdenes apropiadas á fin de que desde luego y por la vía telegráfica se ordene la suspensión de la acción asumida por el Alcalde Sweeney, tanto por no haberse seguido juicio legal alguno de lanzamiento, que amerite un acte semejante, cuanto por encontrarse la disputa, entre ambos Gobiernos, de los terrenos de "El Chamizal," en *statu quo*, mientras se llega á un arreglo definitivo.

Aprovecho esta oportunidad para renovar á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

B. DÁVALOS.
E. de N. ad int.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América.
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

No. 455. WASHINGTON, *January 6, 1910.*

Most Excellent Sir:

Under special instructions just received by wire from my Government, I have the honor to inform Your Excellency that the municipal government of El Paso, Texas, has just secured several plots of ground lying within the "El Chamizal" zone, which at present are fenced in and operated by owners holding a Mexican title, and that the Mayor, Mr. Sweeney, has begun to heap on those grounds stones and material for the erection of works intended to treat the refuse of the city. He broke the padlock on the entrance gate of the fence and posted notices ordering the arrest of the Mexican owners who would resist his action.

In view of the foregoing, my Government instructs me to apply to Your Excellency, presenting the case as urgent and referring to your Department of State's notes Nos. 77 and 81, and to beg that, in the absence of any objection, you may please to cause appropriate orders to be sent immediately and by telegraph to have

Mayor Sweeney desist from the action taken by him, on the grounds that there has been no legal ejectment proceeding of any kind that could justify such action and also that the difference between the two Governments over the "El Chamizal" lands is in "*statu quo*" pending the conclusion of a final arrangement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration

B. DÁVALOS,
Chargé d'Affaires ad interim.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor Dávalos.

DEPARTMENT OF STATE,
WASHINGTON, *January 11, 1910.*

SIR:

I have the honor to acknowledge the receipt of your note No. 455, of the 6th instant, in which you call to the Department's attention the action of Mayor Sweeney of El Paso, Texas, in appropriating for the use of the municipality of El Paso, Texas, certain plots of ground lying within the Chamizal zone, which at present are fenced in and operated by owners holding a Mexican title; and you request that appropriate telegraphic orders be sent immediately to Mr. Sweeney to desist from the action taken by him, on the ground that there have been no legal ejectment proceedings of any kind to justify it, and also because the differences between the United States and Mexico over the "Chamizal" lands are in *statu quo*, pending the conclusion of a final arrangement.

In reply I have the honor to inform you that a copy of your note has been sent to the Attorney General, for his information, with the request that he send suitable instructions, by telegraph, to the appropriate United States Attorney, in the matter.

Accept, Sir, the renewed assurance of my high consideration.

For Mr. Knox:

HUNTINGTON WILSON,
Assistant Secretary of State.

Señor Don BALBINO DÁVALOS,
Chargé d'Affaires ad interim, of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

Nº 530. WASHINGTON, *Marzo 11 de 1910.*

Excelentísimo Señor:

Por instrucciones telegráficas de mi Gobierno, tengo la honra de poner en conocimiento de Vuestra Excelencia que según avisa el Comisionado de Límites mexicano, el Ayuntamiento de El Paso ha adquirido definitivamente trece acres en El Chamizal en una forma tal que contraría el statu quo del territorio en cuestión.

Por tal motivo, acudo á Vuestra Excelencia suplicándole que se sirva dar los pasos necesarios á fin de que no se modifique la condición internacional de ese territorio, conforme lo convenido por notas cambiadas entre ese Departamento y esta Embajada.

Anticipando á Vuestra Excelencia las gracias por lo que se sirva hacer en este asunto, le reitero las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los
Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA

No. 530. WASHINGTON, *March 11, 1910.*

Most Excellent Sir:

Under telegraphic instructions of my Government, I have the honor to inform Your Excellency that the Mexican Boundary Commissioner reports that the City Council of El Paso has perfected the acquisition of thirteen acres in "El Chamizal" in such a form as to antagonize the statu quo of the above named territory.

I have therefore to apply to Your Excellency with a request that you may be pleased to take appropriate action to the end that no change be made in the international status of the said territory as agreed by notes exchanged between your Department and this Embassy.

Thanking Your Excellency in advance for such action as you may be pleased to take in the case, I renew to you the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA

Most Excellent Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Knox to Señor de la Barra.

No. 209[a] DEPARTMENT OF STATE,
WASHINGTON, *March 22, 1910.*

Excellency:

I have the honor to acknowledge the receipt of your two notes of the 11th instant, numbered 529 and 530, respectively, and of your note No. 22, of the 19th instant, with enclosure, relative to the *status quo* in El Chamizal.

In reply thereto I have the honor to refer Your Excellency to my note, numbered 208, of this date.

Accept, Excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Mexican Ambassador.

Mexican Embassy to Department of State.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

Memorandum.

The Commissioner of the Mexican Boundary Commission reports by telegraph, that the City Council of El Paso, Texas, has ordered a plant to be built in the Chamizal tract for the treatment of garbage and refuse.

The Mexican Government, considering that this is contrary to the convened *statu quo* of the Chamizal tract, has directed the Mexican Embassy to request the State Department to take the necessary steps in order to stay the action of the City Council.

WASHINGTON, *August 1st, 1910.*

---

[a] [For more convenient reference this note is also printed supra, p. 424.—Agent's note.]

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

No. 83. WASHINGTON, *Agosto 2 de 1910.*

Excelentísimo Señor:

En virtud de instrucciones especiales de mi Gobierno, y refiriéndome al memorandum que el día 1° del actual dejó el Primer Secretario de esta Embajada al Señor Clark, Solicitor de ese Departamento, tengo la honra de acudir á Vuestra Excelencia en solicitud de sus buenos oficios, á fin de que, si en ello no hay inconveniente, interponga prontamente su acción en contra de la orden dada por el Ayuntamiento de la Ciudad de El Paso, Texas, para construir en el territorio en disputa de El Chamizal una planta para tratamiento de desechos y basuras; por ser la obra proyectada contraria al *statu quo* de dicho territorio, convenido entre ambos Gobiernos.

Anticipando á Vuestra Excelencia las gracias por lo que se sirviera hacer á este respecto, me complazco en reiterarle las seguridades de mi más alta y de mi más distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA.

No. 83. WASHINGTON, *August 2, 1910.*

Most Excellent Sir:

Under special instructions of my Government and with reference to the memorandum left with Mr. Clark, Solicitor of the Department by the First Secretary of this Embassy on the 1st instant, I have the honor to apply for Your Excellency's good offices to the end that, in the absence of any objection, you will interpose your prompt action against the order issued by the Municipal Government of the City of El Paso, Texas, for the erection, on the disputed territory of El Chamizal, of a plant for the treatment of refuse and garbage, the contemplated work being contrary to the *statu quo* agreed upon by both Governments.

Thanking Your Excellency in advance for whatever you may be pleased to do in the matter, I take pleasure in renewing to you the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

The Most Excellent Mr. PHILANDER C. KNOX,
Secretary of State of the United States, Washington, D. C.

Department of State to the Mexican Embassy.

Memorandum.

In compliance with the Mexican Embassy's memorandum of the 1st instant, the Acting Secretary of State sent to the Mayor of El Paso, Texas, on the 2d instant, a telegram which, paraphrased, is as follows:

The following memorandum has been received by the Department of State from the Mexican Ambassador: quote: The Mexican member of the Mexican Boundary Commission reports by telegraph that the City Council of El Paso, Texas, has ordered a plant to be built in the Chamizal Tract for the treatment of garbage and refuse. The Mexican Government considering that this is contrary to the statu quo of the Chamizal Tract which has been agreed upon, has directed the Embassy to request the Department of State to take the necessary steps in order to stay the action of the City Council. End quote. The Department will be glad to receive from you a statement concerning this matter. The Department regards as particularly unfortunate any further irritation at this time in connection with Chamizal.

The DEPARTMENT OF STATE,
WASHINGTON, *August 10, 1910.*

Mr. Wilson to Señor de la Barra.

No. 294. DEPARTMENT OF STATE,
WASHINGTON, *August 24, 1910.*

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's note No. 83, of August 2, 1910, in which you request the Department to interpose its action against the order issued by the municipal Government of the City of El Paso, Texas, for the erection, on the disputed territory of El Chamizal, of a plant for the treatment of refuse and garbage. You state that the project is contrary to the *status quo* agreed upon by the Governments of the United States and Mexico.

In reply I have the honor to refer to the Department's memorandum of the 10th instant, informing Your Excellency of the action taken by the Department, and to inform you that on the 5th instant the Department telegraphed to the Mayor of El Paso, urging him promptly to inform the Department of the intentions of the City of El Paso in regard to the matter.

It should, however, be observed that the Department is of the opinion that the contemplated action of the authorities of El Paso, as the matter has been reported to the Department, does not constitute a violation of the *status quo* agreed upon. The question will, however, receive further consideration as soon as the report of the El Paso authorities reaches the Department.

Accept, Excellency, the renewed assurances of my highest consideration.

HUNTINGTON WILSON,
Acting Secretary of State.

His Excellency Señor Don FRANCISCO LEÓN DE LA BARRA
Ambassador of Mexico.

Mr. Wilson to Señor Ricoy.

No. 300. DEPARTMENT OF STATE,
WASHINGTON, *August 30, 1910.*

SIR:

In further reply to the Embassy's note No. 83, of the 2d instant, in regard to the proposed construction by the city government of El Paso, Texas, of a garbage and sewage disposal plant in El Chamizal tract, I have the honor to enclose herewith a copy of a letter from the Mayor pro tempore of El Paso, setting forth his views on the subject.

As was indicated in the Department's note of the 24th instant, it is the Department's opinion that the use which the authorities of El Paso desire to make of the land in question, does not constitute a violation of the *status quo* agreed upon between the two Governments. It is the hope, however, of this Government that, in view of the explanation made by the Mayor pro tempore of El Paso, to the effect that, by erecting the garbage plant referred to, the El Paso authorities have no ulterior motive and no other object than to provide for the health, not only of the people of El Paso, but also of Juarez, it will not now be necessary to consider this phase of the question. The Department feels sure that the Government of Mexico will appreciate the desirability, not to say the necessity, of arranging to dispose of the sewerage of El

Paso in accordance with the plan suggested, in order that the health of that region on both sides of the river may be properly protected, and in this connection, I desire particularly to call your attention to the endorsement which it is said has been heretofore given to this plan by Governor Creel, at present your honored Minister for Foreign Affairs, as well as by Mayor Barcenas of Juarez. The Department ventures to express the hope that your Government will, in view of these facts and circumstances, see its way clear to withdraw its suggestion that the propriety of this proposed work is in itself in any way questionable.

Accept, Sir, the renewed assurance of my high consideration.

HUNTINGTON WILSON,
Acting Secretary of State.

Señor Don LUIS RICOY,
Chargé d'Affaires of Mexico.

Enclosure: From Mayor Pro Tem. of El Paso, Texas, August 20, 1910.

[Inclosure.]

Mr. Hewitt to Mr. Knox.

MAYOR'S OFFICE
EL PASO, TEXAS.

EL PASO, TEXAS, *Aug. 20, 1910.*

To the Honorable the SECRETARY OF STATE,
Washington, D. C.

SIR:—

Referring to the communication heretofore had between your Department and Honorable W. F. Robinson, Mayor of the City of El Paso, I desire to state that on the morning of the 14th inst. Mayor Robinson was killed by the falling walls of a burning building, and as Mayor pro tem of the City, I desire to present to you the position of this City in reference to the erection of garbage and sewer disposal plants in what is known as the "El Chamizal tract", now in dispute between our Government and the Government of Mexico.

For many years past the El Paso sewer system, which was designed and constructed by Col. Waring of New York, emptied into the bed of the Rio Grande, approximately Four miles below the Cities of El Paso, Texas, and Juarez, Mexico, but by reason of the fact that during the hot months of the summer, the river is almost continuously dry, and the sewer discharge creates much danger to the two Cities of such a nature as to necessitate the

erection of a plant for the purpose of the destruction of the product, consequently, the City of El Paso, in September, 1908, voted an issue of One hundred thousand dollars in municipal bonds for the purpose aforesaid. The bonds were immediately sold and the City entered into a contract with the Sanitary Engineers for the purpose of drawing up plans and specifications and erecting the plants stated. Delays of various kinds have prevented the City from consummating this object, and the money still lies in the City Treasury, and the contractors are anxious to start work under their contract. Two injunction suits were instituted against the City for the purpose of preventing the discharge of the sewers on the dry sands of the river bed. Upon the request of the City officials, and upon their specific promise to erect these plants, these injunction suits have been postponed from time to time, so as to enable the City to take the necessary steps to protect the health of its people. El Paso, its officials and its citizens have always entertained the friendliest feelings for our Mexican neighbors to the South, and we would hesitate before we would do anything that would be calculated to irritate and give offence to the Mexican Government, but the health of this community, and, perhaps, the lives of thousands of American citizens, as well as Mexican citizens, depend upon good sanitary conditions at this place.

During the year 1909, while J. U. Sweeney was Mayor of the City he communicated with Mr. Felix Barcenas, then Mayor of Juarez, and with Hon. Enrique Creel, then and now Constitutional Governor of the State of Chihuahua, Mexico, now Minister de Fomento in the Cabinet of General Diaz at Mexico City, relative to the disposition of the garbage and sewerage product of the two Cities of El Paso and Juarez, and sought to enter into an agreement whereby a joint sewer and garbage disposal plant would be maintained at approximately the same point where the City now desires to erect same. Mayor Sweeney received the assurance of Mayor Barcenas and of Governor Creel that they would do all in their power to co-operate with the City Council of El Paso in an endeavor to preserve the health of the communities aforesaid, but nothing definite was consummated, although Governor Creel, at all times, expressed a considerable degree of interest in the people of El Paso, and during the past has given evidence many times of his friendship for this City.

The City of El Paso does not claim any better title to the property upon which it desires to construct these plants than its grantor

possessed, and the City was progressing in the matter just as an individual would do under similar circumstances. The City had no ulterior motive in placing these plants in the "Chamizal tract" but was placing it there by reason of the fact that the "Chamizal," so-called, is the only proper or possible site upon which to place the plants aforesaid. The executors of the estate of Frank B. Cotton, deceased, grantors of the site in question, have given a bond to the City to protect it in the event there should be any change of jurisdiction endangering the citizen's investment. I desire to impress upon the mind of the Honorable Secretary the fact that it is essential that work on these plants should be commenced at once, so that we may have it in operation next summer to protect the lives of the people of this community. I cannot conceive of Mexico, through its Government, urging an objection against the officials of this City taking the steps they deem necessary to protect the lives of our citizens.

We shall not take any steps toward the construction of these plants until we hear from your Department, and we desire to state that any delay caused by Mexico, which results in an epidemic of disease and death in this community, will place upon the Mexican Government the responsibility for such.

Very respectfully,

JAS. T. HEWITT,
Mayor Pro. Tem.

Mr. Adee to Señor Ricoy.

No. 316. DEPARTMENT OF STATE,
Washington, October 3, 1910.

SIR: Referring to the Department's note No. 300, of August 30th last, I have the honor to inform you that the Department is in receipt of a letter of inquiry from the Mayor of El Paso, Texas, with reference to the erection of the proposed garbage crematory at that place, and urging the need for an early commencement of the work of the erection of that plant, in order that the health of the inhabitants of the cities of El Paso and Juarez and their vicinities may be properly protected.

The Department urgently renews its views as heretofore expressed in its correspondence with your Embassy, and ventures to hope that your Government will find it convenient to take early opportunity to indicate its want of objection to the erection of the plant desired and so much needed, in order to avoid the

danger of an epidemic which might otherwise afflict the region next summer, and result in the loss of many lives.

Accept, Sir, the renewed assurances of my high consideration.

ALVEY A. ADEE,
Acting Secretary of State.

Señor Don LUIS RICOY,
Chargé d'Affaires of Mexico.

Señor Ricoy to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

Número 183. WASHINGTON, *6 de octubre de 1910.*

Excelentísimo Señor:

Tengo la honra de poner en el conocimiento de Vuestra Excelencia que ayer comuniqué por la vía telegráfica á la Secretaría de Relaciones Exteriores lo conducente de la nota de ese Departamento, nímero 316, fecha 3 del actual, en la que Vuestra Excelencia en vista del peligro de una epidemia en la región de El Paso y Ciudad Juarez, encarece la conveniencia de que mi Gobierno manifieste cuanto antes que no se opone á la construcción de una planta en El Chamizal para el tratamiento de desechos y basuras.

Me complazco en aprovechar esta oportunidad á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

L. RICOY.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington.

[Translation.]

MEXICAN EMBASSY
IN THE
UNITED STATES OF AMERICA.

No. 183. WASHINGTON, *October 6, 1910.*

Most Excellent Sir:

I have the honor to inform Your Excellency that I telegraphed yesterday to the Department of Foreign Affairs the contents of the note of that Department, number 316, under date 3 of the present month, in which Your Excellency, in view of the danger

of an epidemic in the region of El Paso and Ciudad Juarez, urges the utility of my Government's stating as soon as possible that it is not opposed to the construction of a plant in El Chamizal for the disposal of refuse and garbage.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

L. RICOY.

His Excellency Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington.

Señor Ricoy to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

Número 184. WASHINGTON, *8 de octubre de 1910.*

Excelentísimo Señor:

Refiriéndome á la nota número 183 de esta Embajada fecha 6 del actual, tengo la honra de poner en conocimiento de Vuestra Excelencia que según telegrama que acabo de recibir, mi Gobierno espera el informe del Comisionado de Límites para decidir acerca de la construcción de la planta para el tratamiento de desechos y basuras que el Ayuntamiento de El Paso se propone establecer en El Chamizal.

Con este motivo, me complazco en reiterar á Vuestra Excelencia las seguridades de mi más alta y de mi más respetuosa consideración.

L. RICOY.
Encargado de Negocios ad interim.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington.

[Translation.]

EMBASSY OF MEXICO.
TO THE
UNITED STATES OF AMERICA.

No. 184. WASHINGTON, *October 8, 1910.*

Most Excellent Sir,

Referring to this Embassy's note No. 183 of the 6th instant, I have the honor to inform Your Excellency that, according to a telegram I have just received, my Government is awaiting the Boundary Commissioner's report on which to base its decision respecting the erection of a plant for the treatment of garbage and refuse which the city Government of El Paso proposes to establish in El Chamizal.

I take pleasure, on this occasion, in renewing to Your Excellency the assurances of my highest and most respectful consideration.

L. RICOY,
Charge d'Affaires ad interim.

The Most Honorable
Mr. PHILANDER C. KNOX
Secretary of State of the United States of America,
Washington.

Mr. Adee to Señor Ricoy.

No. — DEPARTMENT OF STATE,
WASHINGTON, *October 15, 1910.*

SIR:

I have the honor to acknowledge the receipt of your note, numbered 184, of the 8th instant, in which you state that your Government is awaiting the Boundary Commissioner's report on which to base its decision respecting the erection of a plant for the treatment of garbage and refuse which the city government of El Paso proposes to establish in El Chamizal. A copy of your note has been sent to the Mayor of El Paso, for his information.

Accept, Sir, the renewed assurances of my high consideration.

ALVEY A. ADEE,
Acting Secretary of State.

Senor Don LUIS RICOY,
Charge d'Affaires of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

Número 208. WASHINGTON, *20 de octubre de 1910.*

Excelentísimo Señor:

Refiriéndome á la correspondencia anterior y especialmente á la nota de esta Embajada No. 184 fecha 8 del actual relativa al proyecto de establecer un crematorio para basuras en el territorio de " El Chamizal," tengo la honra de poner en conocimiento de Vuestra Excelencia que según telegrama que he recibido de mi Gobierno, el Comisionado mexicano de límites manifiesta que los informes que ha transmitido el Ayuntamiento de El Paso á ese respecto pueden ser tachados de parcialidad; pues no urge el establecimiento de dicha planta en el curso del año actual, por haber una provisional que se suficiente para que no se menoscabe la salubridad; que el sitio escogido para la construcción en proyecto no es técnicamente el más adecuado; que la erección del edificio de que se trata complicaría la situación y perjudicaría los intereses de México en el Chamizal.

Conforme instrucciones de mi Gobierno, al tener la honra de poner en conocimiento de Vuestra Excelencia las observaciones anteriormente expuestas, me permito abrigar la esperanza de que el Departmento de Estado reconocerá con su alto espíritu de justicia que la construcción de la nueva planta, ni responde á una necesidad urgente en favor de la salubridad de los habitantes de esa región, ni va de acuerdo con el criterio que ha inspirado á los dos Gobiernos el mantenimiento del statu quo en la zona del Chamizal hasta la decisión final del caso.

Reitero á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington.

[Translation.]

EMBASSY OF MEXICO
TO THE
UNITED STATES OF AMERICA.

No. 208. WASHINGTON, *October 20, 1910.*

Most Excellent Sir:

Referring to previous correspondence and, particularly, to this Embassy's note No. 184 of the 8th instant relative to the proposed erection of a garbage crematory in the Chamizal tract, I have the honor to inform Your Excellency that, according to a telegram received by my Government, the Mexican Boundary Commissioner declares that the reports submitted by the city government of El Paso on the subject may be charged with partiality; the erection of the plant during the present year is not urgent as there is a provisional one that is sufficient to guard against impairment of the public health: the site selected for the contemplated building is not the most suitable technically; the erection of the building under consideration would complicate the situation and prejudice Mexico's interests in El Chamizal.

In compliance with my Government's instructions I have the honor to bring the foregoing remarks to Your Excellency's knowledge and venture to hope that the Department in its high sense of justice will admit that the erection of the new plant neither answers any urgent need for the protection of the health of the inhabitants of those parts nor accords with the views by which the two Governments were guided in maintaining the status quo in the Chamizal Zone until the case is finally settled.

I renew to Your Excellency the assurances of my highest and most distinguished consideration.

F. L. DE LA BARRA.

The Most Honorable
Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

CORRESPONDENCE WITH RELATION TO THE EJECTION OF HIPÓLITO MENA.

Señor Dávalos to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

WASHINGTON, *Diciembre 1°. de 1909.*

Número 414.

Excelentísimo Señor:

Por instrucciones especiales de mi Gobierno recibidos por telégrafo, tengo la honra de comunicar á Vuestra Excelencia, que las autoridades respectivas de El Paso, Texas, han seguido un juicio de lanzamiento en contra del ciudadano mexicano Hipólito Mena, residente en los terrenos de "El Chamizal," habiéndose señalado el día de mañana, jueves 2 de Diciembre, para efectuar dicho lanzamiento. Mi Gobierno agrega que el Agente Federal del Gobierno americano Señor Engleking, de El Paso, Texas, conoce del asunto.

En virtud de encontrarse actualmente el caso de "El Chamizal" en *statu quo*, tengo la honra de dirigirme á Vuestra Excelencia á fin de que, en vista de las circunstancias, y si para ello no hubiere inconveniente, se sirva hacer que se dicten por la vía telegráfica, las órdenes conducentes á la inmediata suspensión del acto referido.

Aprovecho esta oportunidad para renovar á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

B. DÁVALOS.
E. de N. ad-int.

Excelentísimo Señor
PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América.
Washington, D. C

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

WASHINGTON, *December 1, 1909.*

No. 414.

Most Excellent Sir:

Under special instructions of my Government received by telegraph, I have the honor to inform Your Excellency that eviction proceedings have been carried on by the authorities of El Paso, Texas, against the Mexican citizen Hipólito Mena, residing on the Chamizal tract, tomorrow Thursday December 2 being the day set for the eviction. My Government adds that the Federal Agent of the American Government Mr. Engelking has cognizance of the case.

The "El Chamizal" question being at present in *statu quo*, I have the honor to apply to Your Excellency to the end that, in view of the circumstances and in the absence of any objection you may be pleased to have orders issued by telegraph for the immediate stay of the action above referred to.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

B. DÁVALOS,
Chargé d'Affaires ad interim.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor Dávalos.

No. 138. DEPARTMENT OF STATE,
WASHINGTON, *December 3, 1909.*

SIR:

I have the honor to acknowledge the receipt of your note No. 414, of the 1st instant, requesting that orders be issued by telegraph for the immediate stay of the proceedings that have been carried on by the authorities of El Paso, Texas, to eject the Mexican citizen, Hipólito Mena, from his holding in the Chamizal tract; and to inform you, in reply, that the Department has given the matter proper direction.

Accept, Sir, the renewed assurance of my high consideration.
For Mr. KNOX:

HUNTINGTON WILSON,
Assistant Secretary of State.

Señor Don BALBINO DÁVALOS.
Chargé d'Affaires ad interim. of Mexico.

Señor Dávalos to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON. *Diciembre 7 de 1909.*

Número 419.

Excelentísimo Señor:

En virtud de instrucciones recibidas por telégrafo de mi Gobierno, tengo la honra de poner en conocimiento de Vuestra Excelencia, con referencia á la nota de esta Embajada número 414, de 1°. del actual, que el Juez de Paz de El Paso, Texas, Señor Watson, ha denegado la intervención federal en el caso del lanzamiento del mexicano Hipólito Mena, de los terrenos de El Chamizal.

Mi Gobierno me recomienda al mismo tiempo, insista yo con Vuestra Excelencia á fin de que, si para ello no hubiere inconveniente, se digne dictar por la vía telegráfica las órdenes apropiadas, para que se anule inmediatamente el fallo del Juez de Paz Señor Watson, por falto de jurisdicción. La urgencia de esta petición es basada en haber sido señalada la vista de apelación del caso para el día de mañana miércoles 8.

Aprovecho esta oportunidad para renovar á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

B. DÁVALOS.
E. de N. ad-int.

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de los Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,

WASHINGTON, *December 7, 1909.*

No. 419.

Most Excellent Sir:

Under instructions received by telegraph from my Government, I have the honor to advise Your Excellency, with reference to this Embassy's note No. 414 of the 1st instant that the Justice of the Peace at El Paso, Texas, Mr. Watson, has denied the federal intervention in the case for the eviction of the Mexican Hipolito Mena, from the El Chamizal tract.

My Government instructs me at the same time to urge Your Excellency to be pleased to issue by telegraph, in the absence of any objection, appropriate orders for the immediate setting aside of Justice of the Peace Watson's decision on the ground of lack of jurisdiction. The urgency of this request is based on the fact that tomorrow Wednesday the 8th is the day set for the hearing of the appeal.

I avail myself of this opportunity to renew to your Excellency the assurance of my highest and most distinguished consideration.

B. DÁVALOS.

Chargé d'Affaires ad interim.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor Dávalos.

No. 140

DEPARTMENT OF STATE,
WASHINGTON, *December 9, 1909.*

SIR:

Referring to the recent conversation between the Mexican Embassy and the law officer of the Department, I have the honor to inform you that a copy of your note No. 419, of the 7th instant, on the subject of the decision of Mr. Watson, Justice of the Peace, in the suit for the ejection of the Mexican citizen, Hipólito Mena, from the Chamizal tract, has been sent to the Attorney General, and that he has been requested to send, by telegraph, appropriate instructions to the United States District Attorney at El Paso,

Texas, directing him to report fully in the matter, and meantime, to insist on a temporary stay of proceedings.

Accept, Sir, the renewed assurance of my high consideration.

HUNTINGTON WILSON.
Acting Secretary of State.

Señor Don BALBINO DÁVALOS,
Chargé d'Affaires ad interim of Mexico.

Mr. Wilson to Señor Dávalos.

No. 142

DEPARTMENT OF STATE,
WASHINGTON, *December 14, 1909.*

SIR:

Referring to previous correspondence in the matter of the proceedings for the ejectment of Hipólito Mena from the Chamizal tract, and especially to the Department's note informing you that the Attorney General had been requested to direct the United States Attorney at El Paso, Texas, by telegraph, to insist on a temporary stay of proceedings and to report fully thereon, I have the honor to say that the Department is to-day in receipt of a letter from the Department of Justice, informing the Department that a telegraphic report has been received from the United States Attorney, in which he states that Mena has given an appeal bond to the County Court for the January Term.

The United States Attorney also states that Mena is and has always been a mere tenant, having never acquired any title to the property in question, and that the evidence is in sharp conflict as to the landlord under whom Mena obtained possession, the Mexican claimants saying that Mena got possession to enter from them, and the American landlord contending contrariwise and showing a written lease and rent payment thereunder from the day of first entry.

The District Attorney has been instructed to report fully by mail, and the Department will communicate further with you upon the receipt of his detailed report.

Accept, Sir, the renewed assurance of my high consideration.

For Mr. Knox:

HUNTINGTON WILSON.
Assistant Secretary of State

Señor Don BALBINO DÁVALOS,
Chargé d'Affaires ad interim of Mexico.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA.

WASHINGTON, *21 de marzo de 1910.*

Número 40.

Excelentísimo Señor:

Con referencia á las notas anteriormente cambiadas entre ese Departamento y esta Embajada relativas al lanzamiento de Hipólito Mena de tierras del Chamizal, tengo la honra de informar á Vuestra Excelencia que, habiendo tenido mi Gobierno conocimiento cierto de que no asiste la justicia á dicho individuo en la acción entablada en cuanto al derecho de posesión á los predios situados en la región del Chamizal, y deseoso de demostrar mi própio Gobierno una vez más la buena voluntad y el espíritu de rectitud que le anima para zanjar todas las dificultades que se han presentado en el arreglo de la cuestión del Chamizal, pendiente entre ambos Gobiernos, se ha apresurado á darme instrucciones para que retire la petición que á ese Departamento presentó esta Embajada á fin de que se suspendieran temporalmente los procedimientos que en contra de Hipólito Mena se siguen ante el Juzgado de Paz en El Paso, Texas.

Reitero á Vuestra Excelencia las seguridades de mi más alta consideración.

F. L. DE LA BARRA

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América,
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA,

WASHINGTON, *March 21, 1910.*

No. 40.

Most Excellent Sir:

With reference to the notes heretofore exchanged between your Department and this Embassy in regard to Hipólito Mena's eviction from Chamizal lands, I have the honor to inform Your Excellency that my Government having ascertained that the said person holds no legal right in the action instituted as to the title

to farming lands in the Chamizal tract, and being desirous of giving further evidence of the good will and upright spirit by which it is animated in reaching an amicable settlement of all the difficulties encountered in the disposal of the Chamizal question pending between the two Governments has hastened to instruct me to withdraw the request made of your Department by this Embassy for a temporary stay of the proceedings instituted against Hipólito Mena before the Justice of the Peace of El Paso, Texas.

I renew to Your Excellency the assurances of my highest consideration.

F. L. DE LA BARRA.

His Excellency PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor de la Barra.

No. 212. DEPARTMENT OF STATE,
Washington, March 31, 1910.

Excellency:

I have the honor to acknowledge the receipt of your note, No. 40, of the 21st instant, conveying the gratifying information that, your Government having ascertained that Hipolito Mena, whose eviction from El Chamizal has been the subject of correspondence between the Government of Mexico and this Department, holds no legal right in the action instituted as to the title to farming lands in the Chamizal tract; and being desirous of giving further evidence of the good will and upright spirit by which it is animated in reaching an amicable settlement of all the difficulties encountered in the disposal of the Chamizal question pending between the two Governments, has instructed you to withdraw the Embassy's request for a temporary stay of the proceedings instituted against Hipólito Mena before the Justice of the Peace of El Paso, Texas.

Accept, Excellency, the renewed assurances of my highest consideration.

For Mr. Knox:

HUNTINGTON WILSON,
Assistant Secretary of State.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

CORRESPONDENCE RELATING TO CERTAIN PROCEEDINGS BEFORE JUDGE WALTHALL.

Señor de la Barra to Mr. Knox.

EMBAJADA DE MÉXICO
EN LOS
ESTADOS UNIDOS DE AMÉRICA

WASHINGTON, *5 de febrero de 1910.*

N°. 492.

Excelentísimo Señor:

La Secretaría de Relaciones Exteriores me da noticia por telégrafo de la resolución que ha dictado el Juez Walthall del 41er Distrito Judicial de Texas, en el juicio número 5033, dando una orden de lanzamiento contra George Paul, José Martínez y otros 51 ocupantes mexicanos de El Chamizal. Dicha orden debe haber sido puesta ayer en manos del Sheriff para su ejecución. Como esto violaría el mantenimiento del *statu quo* concertado entre las dos Cancillerías, me permito suplicar á Vuestra Excelencia que se sirva disponer que por telégrafo se den las órdenes necesarias para que se impida el cumplimiento de esa resolución.

Aprovecho esta ocasión para reiterar á Vuestra Excelencia las seguridades de mi más alta y distinguida consideración.

F. L. DE LA BARRA

Excelentísimo Señor PHILANDER C. KNOX,
Secretario de Estado de los Estados Unidos de América.
Washington, D. C.

[Translation.]

EMBASSY OF MEXICO
TO THE UNITED STATES OF AMERICA.

WASHINGTON, *February 5, 1910.*

No. 492.

Excellency:

The Secretary of Foreign Relations gives me notice by telegraph of the decree that Judge Walthall of the 41st Judicial District of Texas has pronounced in case number 5033, containing an order of ejectment against George Paul, José Martínez and 51 other Mexican occupants of El Chamizal. Said order must have been placed yesterday in the hands of the Sheriff for its execution. As this would violate the maintenance of the *statu quo* agreed upon by the two Foreign Offices permit me to beg Your Excellency

to cause the necessary directions to be sent by telegraph to prevent the carrying out of that judgment.

I improve this occasion to reiterate to Your Excellency the assurance of my most high and distinguished consideration.

F. L. DE LA BARRA.

Most Excellent Mr. PHILANDER C. KNOX,
Secretary of State of the United States of America,
Washington, D. C.

Mr. Wilson to Señor de la Barra.

No. 179 DEPARTMENT OF STATE,
Washington, February 10, 1910.

Excellency:

I have the honor to acknowledge the receipt of your note No. 492, of the 5th instant, in which you inform the Department that Judge Walthall, of the Forty-first Judicial District of Texas, has issued an order of ejectment against George Paul, José Martinez, and fifty-one other Mexican occupants of El Chamizal. You state that this action is in violation of the maintenance of the *status quo* agreed upon between Mexico and the United States; and you request that telegraphic instructions be given to prevent the execution of the judgment.

In reply I have the honor to say that the Department took the matter up immediately by telegraph with the Attorney-General, requesting that telegraphic instructions be sent to the appropriate district attorney, directing an investigation of the matter in question.

Accept, Excellency, the renewed assurances of my highest consideration.

For Mr. Knox:

HUNTINGTON WILSON,
Assistant Secretary of State.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

Mr. Wilson to Señor de la Barra.

DEPARTMENT OF STATE,
Washington, February 11, 1910.

Excellency:

Referring to the Department's note No. 179, of the 10th instant, concerning the ejectment proceedings against George Paul, José Martinez, and fifty-one other Mexican occupants of El Chamizal, I have the honor to enclose for your information a copy of a letter from the Attorney-General, quoting telegraphic correspondence in reference to the matter.

The Department is awaiting the receipt of the report promised by the United States Attorney, in order that it may be able properly to suggest the course of action which should be pursued in this case.

Meanwhile, the Attorney-General has been requested to direct the District Attorney to endeavor to secure the postponement of the execution of the writ referred to.

Accept, Excellency, the renewed assurances of my highest consideration.

For Mr. Knox:

HUNTINGTON WILSON,
Assistant Secretary of State.

Enclosure;
From the Attorney-General,
February 8, 1910.

His Excellency
Señor Don FRANCISCO LEÓN DE LA BARRA,
Ambassador of Mexico.

[Inclosure.]

Mr. Wickersham to Mr Knox.

DEPARTMENT OF JUSTICE,
WASHINGTON,

103530

FEBRUARY 8, 1910.

The SECRETARY OF STATE.

SIR:

I have the honor to acknowledge your telegram of the 5th instant concerning the ejectment proceedings against George Paul and other occupants of El Chamizal, case No. 5033. Imme-

diately upon the receipt of your telegram I wired the United States Attorney for the Western District of Texas as follows:

Mexican Ambassador advises State Department that Judge Walthall, forty-first Judicial District, Texas, has granted writ of ejectment, case number five thousand thirty-three, against George Paul, Jose Martinez and fifty-one other Mexican occupants, El Chamizal, and that writ was placed in hands of sheriff for execution yesterday. Investigate, directing attention of Judge Walthall to fact that boundary of territory (El Chamizal) is in dispute between United States and Mexico, and endeavor to obtain suspension of execution of writ. Wire brief report.

I am just in receipt of the following telegram from the United States Attorney in answer to mine above quoted:

Responding to your telegram fifth concerning matters relating El Chamizal tract El Paso, beg report wire just received from assistant Engelking reading quote. Your wire yesterday case five thousand thirty three was filed in forty first district court December eighteen nineteen hundred three by Frank B. Cotton against W. J. Warder, Geo. Paul fifty Mexicans in trespass to try title to lands part of El Chamizal. On June twenty-seventh nineteen hundred four judgment for plaintiffs against all defendants, provided however that no writ of possession issue till question of title in similar suit then pending in Federal court El Paso might be finally determined. Cotton won in similar suit U. S. Supreme Court October nineteen hundred seven. Alias writ issued from forty first court April thirteen nineteen hundred and eight but not executed. Last writ issued Jany. twenty ninth, nineteen hundred ten. I presented matter to Walthall. Counsel for both parties agreed to suspend writ reasonable time till U. S. can intervene or decide upon its course. Cotton and his counsel are determined to execute last writ. Writing full details Engelking.

As soon as the written report is received I will communicate with you further.

Respectfully,

GEO. W. WICKERSHAM,
Attorney General.